TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 324 80.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

WIRT ADAMS, STATE REVENUE AGENT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

FILED JUNE 8, 1899.

(17,488.)

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COMPANY ET A

WIRT ADAMS,

IN ERROR TO THE SUPREM

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(17,438.)

RT OF THE UNITED STATES.

BER TERM, 1899.

No. 324.

MISSISSIPPI VALLEY RAILROAD
AL., PLAINTIFFS IN ERROR,

vs.

S, STATE REVENUE AGENT.

EME COURT OF THE STATE OF MISSISSIPPI.

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1 Supreme Court of Mississippi, March Term, A. D. 1899.

Pleas and proceedings had and done at a regular term of the supreme court of Mississippi, begun and held in the court-room, in the capitol, in the city of Jackson, on the first Monday, the sixth day, of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable Thomas H. Woods, chief justice, and the Honorable Albert H. Whitfield and the Honorable S. H. Terral, associate justices; E. W. Brown, clerk of said court, in person, and by C. C. Campbell, his deputy; Thomas J. Wharton, marshal, and Thomas Grant, porter.

Proclamation being made, court proceeded to the dispatch of business.

2 Pleas and proceedings had and done at a regular term of the circuit court in and for the first district of the county of Hinds, State of Mississippi, begun and held at the court-room, in the city of Jackson, on the 2nd Monday, being the 12th day, of July, A. D. 1897, before the Honorable Robert Powell, judge of the seventh judicial district of said State and presiding judge of said court.

Be it remembered that heretofore, to wit, on the 7th day of July, 1897, there was filed in the clerk's office of said court a certain declaration, with the endorsement thereon, — is in words and figures following, to wit:

In the Circuit Court of the 1st District of Hinds County, Miss., to July Term, 1897.

WIRT ADAMS, State Revenue Agent, &c.,
vs.
THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY.

Comes the plaintiff, Wirt Adams, State revenue agent, duly elected and qualified as such officer, and holding the same under the laws of the State of Mississippi, who here sues for the use and benefit of the following incorporated cities and towns in said State, to wit, Jackson, Flora, Yazoo City, Thornton, Tchula, Cruger, Lexington, Durant, and Greenwood, and complains of the defendant, The Yazoo & Mississippi Valley Railroad Company, a corporation chartered under the laws of the State of Mississippi, and owning and operating a railroad through said district, county, and State, and running through all the above-named cities and towns, and for cause of action shows as follows:

That all of said cities and towns were prior to the year 1893 and continuously from then up to the present time and are now duly incorporated and chartered under the laws of the State of Mississippi, and under their said charters have the power to levy, assess,

and collect taxes upon property subject to taxation within their corporate limits; that in and for the years 1893, 1894, 1895, and
3 1896 all of said cities and towns duly and properly made levies for taxes for municipal purposes on all property subject to taxation by them as follows, to wit: The city of Jackson made a levy of 13 mills for the year 1893, a levy of 14 & ½ mills for 1894, a levy of 13 mills for 1895, a levy of 13 mills for 1896.

The town of Flora made a levy of 3 & ½ mills in and for each of said four years.

The city of Yazoo City made a levy of 11 & ¼ mills for 1893, *a levy of 11 & ¼ mills for 1893*, a levy of 10 & ½ mills for 1894, and a levy of 10 mills in — for each of the years 1895 and 1896.

That the town of Thornton for 1893 made a levy of 6 mills, and for 1894 it made a levy of 6 mills, and for 1895 it made a levy of 6 mills, and for 1896 it made a levy of 6 mills.

The town of Tchula for and in each of said years made a levy of 5 mills.

The town of Cruger for 1893 made a levy of 6 mills, and for 1894 a levy of 6 mills, and for 1895 a levy of 6 mills, and for 1896 it made a levy of 6 mills.

The town of Lexington for 1893 made a levy of 12 mills, and for 1894 it made a levy of 10 mills, and in — for 1895 and 1896 each it made a levy of 11 mills.

The town of Durant for 1893 made a levy of 6 mills, and for 1894 a levy of 6 mills, and for 1895 a levy of 6 mills, and for 1896 a levy of 6 mills.

The town of Greenwood in 1893 made a levy of 5 mills, and for 1894 a levy of 5 mills, for 1895 a levy of 5 mills, and in 1896 a levy of 9 mills, said several levies for taxes made for several years by said cities and towns being on each dollar on the value thereof of all property subject to municipal taxation.

That during all of said years said defendant owned and possessed valuable property in all of said cities and towns, consisting of railroad bed, tracks, side tracks, switches, and depot buildings of the value within each of said cities and towns as hereinafter
4 given, and which was subject to municipal taxes as levied by said cities and towns.

That the said property of defendant has been duly and properly assessed for said city and town taxes according to its value in and for all of said cities and towns for all of said years—that is to say, it was assessed for the taxes of 1893 for the city of Jackson at a valuation of $5,175.00, and for 1894 at $5,175.00, and for 1895 at $5,175.00, and for 1896 at a valuation of $5,175.00.

That for the town of Flora it was assessed for the year 1893 at a valuation of $9,452.00, and for 1894 at a valuation of $9,452.00, and for 1895 at a valuation of $9,450.00, and for 1896 at a valuation of $9,450.00.

That for Yazoo City it was assessed for 1893 at a valuation of $23,886.00, and for 1894 it was assessed at a valuation of $24,073.00, and for 1895 it was assessed at a valuation of $23,752.00, and for 1896 it was assessed at a valuation of $23,752.00.

That for the town of Thornton it was assessed for the year 1893 at a valuation of $3,755, and for 1894 at $3,755, and for 1895 at $3,932.00, and for 1896 at a valuation of $3,932.00.

That for the town of Tchula it was assessed for 1893 at a valuation of $9,916.00, and for 1894 at $9,916.00,and for 1895 at $9,913.00, and for 1896 it was assessed for $9,813.00.

That for the town of Cruger it was assessed for 1893 at $9,466.00, for 1894 at $9,466.00, for 1895 at $9,464.00, and for 1896 at a valuation of $9,464.00.

That for the town of Lexington it was assessed for the year 1893 at a valuation of $11,760.00, and for 1894 at $11,760.00, and for 1895 at $12,058.00, and for 1896 at a valuation of $12,058.00.

That for the town of Durant it was assessed for the taxes of 1893 at a valuation of $3,900.00, and for 1894 at $3,905.00, and for 1895 at $3,904.00, and for 1896 at a valuation of $3,904.00.

That for the town of Greenwood it was assessed for the taxes of 1893 at a valuation of $10,016.00, for 1894 at $10,199.00, and
5 for 1895 at $12,206.00, and for 1895 at a valuation of $12,206.00.

All of which levies and assessments the said defendant has wholly neglected and refused to pay.

That by reason of said levies and assessments and the defendant's neglect and refusal to pay its said taxes aforesaid it became liable to pay and is indebted to the city of Jackson in the sum of $93 275/1000 for the taxes of 1893, and in the sum of 104 03/100 for the taxes of 1894, and in the sum of $93 215/1000 for the taxes of 1895, and in the sum of $93 275/1000 for the taxes of 1896.

And for the reason aforesaid it became liable to pay and is indebted to the town of Flora in the sum of $32 082/1000 for the taxes of 1893, and the sum of $32 082/1000 for the taxes of 1894, and the sum of 32 375/1000 for the taxes of 1895, and the sum of 32 075/1000 for the taxes of 1896.

And for the reason aforesaid it became liable to pay and is indebted to the city of Yazoo City in the sum of $268 715/1000 for the taxes of 1893, and in the sum of $252 765/1000 for the taxes of 1894, and in the sum of $237 52/00 for the taxes of 1895, and in the sum of 237 52/100 for the taxes of 1896.

And for the reason aforesaid it likewise became liable to pay and is indebted to the town of Thornton in the sum of $22 53/100 for the taxes of 1893, and the sum of $22 53/100 for the taxes of 1894, and the sum of $23 592/1000 for the taxes of 1895, and the sum of 23 592/1000 for the taxes of 1896.

And for the reason aforesaid it likewise became liable to pay and — indebted to the town of Tchula in the sum of $49 58/100 for the taxes of 1893, and the sum of $49 58/100 for the taxes of 1894, and in the sum of $49 065/1000 for the taxes of 1895, and in the sum of 49 065/1000 for the taxes of 1896.

And for the reason aforesaid it likewise became liable to pay and is indebted to the town of Cruger in the sum of $56 796/1000
6 for the taxes of 1893, and in the sum of $56 780/1000 for the taxes of 1894, and in the sum of $56 784/1000 for the taxes of 1895, and in the sum of 56 784/1000 for the taxes of 1896.

And for the reasons aforesaid it likewise became liable to pay and is indebted to the town of Lexington in the sum of $141 12/100 for the taxes of 1893, and in the sum of $117 60/100 for the taxes of 1894, and in the sum of $132 638/1000 for the taxes of 1895, and in the sum of $132 638/1000 for the taxes of 1896.

And for the reasons aforesaid it likewise became liable to pay and is indebted to the town of Durant in the sum of $23 40/100 for the taxes of 1893, and in the sum of $23 43/100 for the taxes of 1894, and in the sum of $23 423/1000 for the taxes of 1895, and in the sum of $23 424/1000 for the taxes of 1896.

And for the reasons aforesaid it likewise became liable and is indebted to the town of Greenwood in the sum of $50 08/100 for the taxes of 1893, and in the sum of $50 995/1000 for the taxes of 1894, and in the sum of $61 05/100 for the taxes of 1895, and in the sum of $109 854/1000 for the taxes of 1896.

That the total amount due the city of Jackson for said years is..... $383 85/100
Total due the town of Flora..... 128 31
Total due Yazoo City..... 996 54
Total due Thornton..... 92 244/100
Total due Tchula..... 197 29
Total due Cruger..... 227 16
Total due Lexington..... 523 996/100
Total due Durant..... 93 678/100
Total due Greenwood..... 271 959/100

Total amount of all the taxes for all said cities and towns for the said years of 1893, 1894, 1895, and 1896 is the sum of two thousand nine hundred and fifteen 03/100 dollars.

7 Wherefore plaintiff says that by reason of the neglect and refusal of defendant to pay said taxes, which were properly levied ans assessed against it by said several cities and towns, and by virtue of the authority vested in plaintiff as revenue agent under the laws of the State of Mississippi, an action has accrued to plaintiff against defendant to sue for and collect said sum of $2,915 03/100, together with interest, damages, and costs.

Wherefore plaintiff brings this suit against the said Yazoo & Mississippi Valley Railroad Company and prays judgment for said sum of $2,915.03, together with damages, interest, and cost of suit.

WILLIAMSON & POTTER,
Att'ys for Revenue Agent.

We hereby waive process of summons and enter appearance of defendant in this suit this 7th day of July, 1897.

MAYES & HARRIS,
Att'ys for Y. & M. V. R. R. Co.

Endorsed: Filed and summons waived July 7, 1897. F. B. Neal, clerk, by W. J. Brown, Jr., D. C.

Demurrer.

STATE OF MISSISSIPPI,
County of Hinds, in the First District.

In the Circuit Court, at the July Term, 1897.

WIRT ADAMS, State Revenue Agent,
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY. } 3108.

Comes the defendant herein and demurs to the declaration herein filed against it and says that the same is not sufficient in law; wherefore it prays judgment, &c.

MAYES & HARRIS,
Att'ys for Defendant.

8 Endorsed: Filed July the 12, 1897. F. B. Neal, clerk, by W. J. Brown, Jr., D. C.

Demurrer Overruled.

July Term, 1897, August 3rd, 1897.

WIRT ADAMS, State Revenue Agent,
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY. } 3108.

Came on to be heard the above-styled cause on the demurrer of the defendant to the declaration of the plaintiff, and the same having been argued and submitted on a former day of this term, and having been duly considered, it is now ordered and adjudged by the court that said demurrer be sustained on the ground that the exemption claimed by defendant in its charter of incorporation is perpetual and unconditional as to municipal taxes, and that the said cause be, and the same is hereby, dismissed; to which action of the court in sustaining said demurrer and dismissing his said suit the plaintiff excepted, and his exception was allowed; whereupon plaintiff, in open court, prayed an appeal to the next term of the supreme court of Mississippi; which appeal was by the court allowed.

STATE OF MISSISSIPPI,
Hinds County.

I, F. B. Neal, clerk of the circuit court in and for said county and State, hereby certify the foregoing four pages contain a full, true, and correct transcript of the record of the cause stated in the caption as the same remains on file and of record in my office.

Given under my hand and the seal of said court this 18th day of August, 1897.

F. B. NEAL, *Clerk*,
By W. J. BROWN, JR., *D. C.*

Appellee hereby waives service of citation and enter- appearance to October term, 1897, of the supreme court.

Sept. 14th, 1897.

MAYES & HARRIS,
Att'ys for Appellee.

9 WIRT ADAMS, State Revenue Agent,
v.
THE Y. & M. V. R. R. Co. } Assignment of Error.

Comes the appellant, The State Revenue Agent, and for error assigns the following:

1. The court below erred in holding that the exemption in appellee's charter is perpetual and unconditional.

2. The court erred in sustaining the demurrer to appellant's declaration.

3. The court erred in dismissing appellant's suit.

W. A. HENRY,
WILLIAMSON & POTTER,
Att'ys for Appellant.

Endorsed: Filed September 14th, 1897. E. W. Brown, clerk.

And on the 7th day of December, 1897, the following order was made in said cause:

WIRT ADAMS, State Rev. Agt.,
v.
YAZOO AND MISSISSIPPI VALLEY RAILROAD Co. } 8808.

Submitted on briefs by Messrs. Williamson & Potter and W. A. Henry, for the appellant, with leave to the appellee to file briefs during the week.

And on the 20th day of December, 1897, a day of the December special term, 1897, the following final judgment was rendered:

WIRT ADAMS, State Revenue Agent,
v.
YAZOO AND MISSISSIPPI VALLEY RAILROAD Co. } 8808.

This cause having been submitted on a former day of this term on the record herein from the circuit court of Hinds county, 1st district, and this court, having sufficiently examined and considered the same and being of opinion that there is error therein, doth order and adjudge that the judgment of said circuit court rendered in this cause at the July term thereof, A. D. 1897, on the 3rd day of August, 1897, be, and the same is hereby, reversed, demurrer overruled, and cause remanded, and that the appellee do pay the costs of this appeal, to be taxed, &c.

Opinion.

WIRT ADAMS, State Rev. Agt., v. Y. & M. V. R. R. Co. } 8808.

WHITFIELD, *J.:*

It was held in Yazoo & Miss. Valley Railroad Company *v.* Thomas *et al.*, 65 Miss., 562, affirmed 132 U. S., 174, that the exemption offered in § 8 of act of Feb. 17, 1882—(Laws 1882, p. 838)—was to commence from the completion of a line of said railroad to the Mississippi river. The question there involved related to State and county taxes. The contention here relates to municipal taxes alone. The United States Supreme Court there declare the inflexible rule, that "exemptions from taxation are regarded as in derogation of the sovereign authority and of common right, and, therefore, not to be extended beyond the exact, and express requirements of the language used, construed *strictissimi juris.*" It further declared the fundamental purpose of the offer of exemption to be, to secure the completion of the railroad to the Mississippi river. This was the clear consideration of the exemption. And the opening up of so valuable a line of communication to a great competing river, constituted a consideration the value of which, to the people of that part of Mississippi, can readily be appreciated. And to the argument made then, as now, that the consideration for the exemption, was, as recited in the preamble of the act, "the great public importance" of the work, and "the physical difficulties of constructing and maintaining such railroads in the delta of this State, that court well replied, that all these recitals were "just as referable to the remarkably extensive powers granted" to this company, "as to the assignment of reasons for exemption from taxation." Statutes must receive a reasonable construction, reference being had to their controlling purpose, to all their provisions, force and effect being given not narrowly to isolated and disjointed clauses, but to their plain spirit, broadly taking all their provisions together, in one rational view. Neither grammatical construction, nor the letter of the statute, nor its rhetorical framework, should be permitted to defeat its clear and definite purpose to be gathered from the whole act, comparing part with part. And no construction is even to be adopted, which charges the legislature with absurdity, when any other reasonable view can be taken.

What reasonable explanation can be suggested why this railroad should have perpetual and absolute exemption from municipal taxation as to all its property of every kind whatever, and only limited and conditional exemption from State and county taxation as to its railroad property proper? There is no construction that can uphold appellee's view, save the most technically literal one, in the very face of the paramount purpose of the act to secure a line of railroad to the Mississippi river. We are asked to take the last clause of the entire section, separated only by a semicolon, and look to that only, as if it were the whole section, shutting out the body

of the section of which it is an integral part. Nay, more; we are told that this construction is imperative because of some supposed magical effect in the conjunction "but," with which the said last clause is introduced, when here it may well mean the same as "yet" "still" "moreover." We are not disposed to so wrench the statute from its purpose, and pivot an absolute exemption from muni-pal taxation, for all time to come, granted conditionally for a consideration never performed, upon some supposed exclusive meaning of this very common connective. The purpose of the act manifestly was to grant the limited exemption mentioned, from all taxation, state, county, and municipal, on the property necessary and incidental to its proper use as a railroad, from the completion of the railroad to the Mississippi river; and no exemption otherwise. The language is "shall be exempt from taxation;" all taxation, not "taxation" except municipal taxation. The part of the act dealing with the grant of exemption, is that just quoted. The part of the act in which the last clause of section 8 occurs is devoted to a wholly different purpose, the object of this last part being as the U. S. Sup. Ct. observes on p. 189, "to create a scheme of taxation peculiar to the road." That scheme was to provide that all State and county taxes should be "collected by the treasurer of the State, and paid into the State treasury, to be dealt with as the legislature might direct." And then to guard against the possible implication from the failure to previously specifically mention municipal taxation, and from the failure to mention any method as to its collection, the last clause is added to show that exemption as to municipal taxation, conditional and limited as the other, was also to obtain. Any antithetical use "but" has here, serves this cautionary purpose only. Look at some other provisions of the act. It is provided that "when the period of exemption herein provided shall have expired, the property of said railroad company shall be taxed at the same rate as other property in this State." Not State and county taxes—but all taxes shall be paid. Another gross absurdity would result from the literal construction contended for by the appellee. It is provided that the exemption shall embrace by specific enumeration, the granting clause—the company's "stocks, its railroads, and appurtenances, and all its property necessary or incidental to the full exercise of all the powers herein granted, not to include compresses and oil mills." And yet, beyond all question, if the contention of appellee is correct, and the last clause of the section is to be taken as wholly independent of the rest of the section the exemption from municipal taxation would be absolute and perpetual not only as to property used for railroad purposes proper, but as to all its property of every kind, including compresses and oil mills, which were expressly left subject to State and county taxation at all times.

"A statute must receive such construction as will, if possible, make all its parts harmonize with each other, and render them consistent with its scope and object." Ellison *v.* R. R., 7 George, 572.

"The entire statute must be so read that the whole may have a

harmonious and consistent operation." Vinden *v.* Bowers, 55 Miss., 18.

"In the construction of a statute the object is to get at its spirit and meaning, its design and scope; and that construction will be justified which evidently embraces the meaning and carries out the object of the law, although it be against the letter and the grammatical construction of the act." Dixon *v.* Doe, 1 S. & M., 70; Pointer *v.* Trotter, 10 S. & M., 537; Board *v.* R. R. Co., 72 Miss., at p. 239.

"In determining the proper construction of a statute, the entire legislation on the same subject-matter, its policy and reason, as well as the text of the particular act, must be looked to." Clements *v.* Anderson, 46 Miss., 598.

Apply these elementary tests, remembering that statutes relating to exemptions, "in derogation of sovereign authority and common right, are not be extended beyond the exact and expressed requirements of the language used, construed *strictissimi juris*," and it seems to us clear that this claim to absolute and unlimited exemption from municipal taxation on all the property of appellee cannot be maintained. To maintain it would be to hold that no matter how vast the holdings of the appellee might become in cities and towns, in all the future, and no matter how entirely disconnected such holdings might be from any use necessary or incidental to the operation of the railroad, as a railroad—still all such property would forever be exempt from municipal taxation, though the road should never be built to the Mississippi river. It is quite immaterial that here only railroad property proper is involved, for the same clause which would uphold exemption as to that, would warrant exemption as to all—a purpose most indisputably never dreamed of by the legislature.

Judgment reversed, demurrer overruled, and cause remanded.

12 Pleas and proceedings had and done at a regular term of the circuit court in and for the first district of Hinds county, Mississippi, begun and held at the court-room, in the city of Jackson, on the third Monday, being the 20th day, of June, 1898, before the Hon. Robert Powell, judge of the seventh judicial district of the State of Mississippi and presiding judge of said court.

Mandate of the Supreme Court.

The State of Mississippi to the honorable the circuit court of Hinds county, 1st district, Greeting:

Whereas on the 20th day of December, 1897, the same being a day of the special term of our supreme court, began and held in the court-room, in the capitol, in the city of Jackson, in said State, on the 1st Monday of December, in the year of our Lord 1897, the following final judgment was rendered by our supreme court, to wit:

WIRT ADAMS, State Revenue Agent,
vs.
YAZOO AND MISSISSIPPI VALLEY RAILROAD Co. } No. 8808.

This cause having been submitted on a former day of this term on the record herein from the circuit court of Hinds county, 1st district, and this court, having sufficiently examined and considered the same, being of opinion that there is error therein, doth order and adjudge that the judgment of said circuit court rendered in this cause at the July term thereof, A. D. 1897, on the 3rd day of August, 1897, be, and the same is hereby, reversed, demurrer overruled, and cause remanded, and that the appellee do pay the costs of this appeal, to be taxed, &c.

You are therefore commanded that such execution and further proceedings be had in said cause as according to right and justice, the judgment of our supreme court, and the law of the land ought to be had.

13 Witness the Hon. Thomas H. Woods, chief justice of our supreme court, also the signature of the clerk, and the seal of said court, hereunto affixed, at office, at Jackson, this the 15th day January, A. D. 1898.

[SEAL.]

E. W. BROWN, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Filed January 17th, 1898.

F. B. NEAL, *Clerk*,
By W. J. BROWN, *D'y Clerk.*

Leave to Amend Declaration.

January Term, 1898, January 24th, 1898.

WIRT ADAMS, State Rev. Ag't, Use, etc.,
vs.
YAZOO & MISS. VALLEY R. R. COMPANY. } 3108.

By agreement of counsel for the respective parties in the above cause, made in open court—

It is ordered that the State revenue agent, plaintiff, do have and he is hereby granted leave to amend his declaration filed July 7th, 1897, so as to include in said suit the taxes for the towns along defendant's line for the years 1886, 1887, 1888, 1889, 1890, 1891, 1892, and 1897, as well as the taxes for the years already sued for, said amendment or amended declaration to be filed within thirty days after the present term of the court, and that defendant have leave, within twenty days thereafter, to plead or demur; and by agreement it is further ordered that said cause be continued until the next term of this court.

14 *Amended Declaration.*

In the Circuit Court in and for the First District of Hinds County Mississippi.

WIRT ADAMS, State Revenue Agent, &c.,
vs.
THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY.

Amended declaration.

Comes the plaintiff, Wirt Adams, State revenue agent, duly elected and qualified as such officer and holding the same under the laws of the State of Mississippi, who here sues for the use and benefit of the following incorporated cities, towns, and villages in said State, to wit, Jackson, Flora, Yazoo City, Thornton, Tchula, Cruger, Lexington, Durant, Greenwood, and Sidon, and complains of the Yazoo & Mississippi Valley Railroad Company, a corporation chartered under the laws of the State of Mississippi and owning and operating a railroad through said district, county, and State, and running through all of the above-named cities, towns, and villages, and against D. P. Porter, Jr., tax collector for the city of Jackson; A. G. Moore, assessor for the city of Jackson; F. C. Dunn, tax collector and assessor for the town of Flora; E. J. Poursine, tax collector and assessor for the town of Yazoo City; W. H. Madden, tax collector and assessor for the town of Tchula; J. H. McGee, tax collector and assessor for the town of Cruger; R. E. Welburn, tax collector and assessor for the town of Lexington; W. H. Mullen, tax collector and assessor for the town of Durant; J. L. Gillespie, tax collector and assessor for the town of Greenwood; J. T. Kenshoffer, tax collector and assessor for the town of Sidon, and for cause of action shows as follows: That all of said cities and towns were prior to the year 1886 and continuously from then up to the present time and are now duly incorporated and chartered under the laws of the State of Mississippi, and under their said charters have power to levy, assess, and collect taxes upon property subject to taxation within their corporate limits for municipal purposes.

15 That in and for the years from 1886 to 1897, inclusive, all of said towns and cities duly and properly made levies for taxes for municipal purposes on all property subject to taxation by them as follows, to wit:

The city of Jackson made a levy of 10 mills for the year 1886, a levy of 10 mills for the year 1887, a levy of 14 mills for the year 1888, a levy of 15 & ½ — for the year 1889, a levy of 13 & ½ mills for the year 1890, a levy of 11 mills for the year 1891, a levy of 9 mills for the year 1892, a levy of 13 mills for the year 1893, a levy of 14 & ½ mills for the year 1894, a levy of 13 mills for the year 1896, and a levy of 13 mills for the year 1897.

The town of Flora made a levy of 2 & ½ mills for the year 1889, a levy of 5 mills for the year 1890, a levy of 5 mills for the year 1891, a levy of 3 & ½ mills for the year 1892, a levy of 3 & ½ mills

for the year 1893, a levy of 3 & ½ mills for 1894, a levy of 3 & ½ mills for 1895, and a levy of 3 & ½ mills for 1896.

The city of Yazoo City made a levy of 11 mills for the year 1886, a levy of 11 mills for the year 1887, a levy of 14 mills for the year 1888, a levy of 12 mills for the year 1889, a levy of 13 & ¾ mills for the year 1890, a levy of 13 & ½ mills for the year 1891, a levy of 12 mills for the year 1892, a levy of 11 & ¼ mills for 1893, a levy of 10 & ½ mills for 1894, a levy of 10 mills for 1895, a levy of 10 mills for 1896, and a levy of 10 mills for 1897.

The town of Cruger made a levy of 5 mills for 1895, 5 mills for 1896, and 5 mills for 1897.

The town of Lexington made a levy of 10 mills for 1886, 12 mills for 1887, 10 mills for 1888, 13 mills for 1890, 12 mills for 1891, 10 mills for 1892, a levy of 11 mills for the year 1893, and a levy of 4 & ½ mills for 1894, and for 1895 a levy of 4 & ½ mills, and for 1896 a levy of 4 & ½ mills, *and for 1896 a levy of 4 & ½ mills*, and for 1897 a levy of 22 & ½ mills.

16 The town of Durant made a levy of 5 mills for each and every of the years 1886, 1887, 1888, 1889, 1890, 1891, and 1892, and a levy of 5 mills for each and every of the years 1893, 1894, 1895, & 1896, and a levy of 8 & ½ mills for the year 1897.

The town of Greenwood made a levy of 3 mills for the year 1886, a levy of 3 mills for the year 1887, a levy of 4 & ½ mills for 1888, a levy of 3 & ½ mills for 1889, a levy of 3 mills for 1890, a levy of 2 & ½ mills for 1891, a levy of 2 mills for 1892, a levy of 5 mills for 1893, a levy of 5 mills for 1894, a levy of 9 mills for 1895, a levy of 9 mills for 1896, and a levy of 9 mills for the year 1897.

The town of Sidon made a levy of 2 & ½ mills for the years 1893, 1894, 1895, 1896, & 1897.

Said several levies for taxes made for said several years by said cities, towns, and villages being on each dollar of the value thereof of all property subject to municipal taxation.

That during all of said years said defendant owned and possessed valuable property in all of said cities, towns, and villages, consisting of its railroad bed, tracks, side tracks, switches, and depot buildings, of the value within each of said cities, towns, and villages as hereinafter given, and which was subject to municipal taxes as levied by said cities, towns, and villages.

That said property of defendant has been duly and properly assessed for said city, town, and village taxes according to its value in and for all of said cities, towns, and villages for all of said years—that is to say, it was assessed for the taxes of each and every of the years 1886 to 1897, inclusive, for the city of Jackson at a valuation of $5,175; that for the town of Flora it was assessed at a valuation of $9,452.00 for the years 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, and for the years 1895 and 1896 each at a valuation of $9,450.00, and for the year 1897 at a valuation of $9,469.00.

That for Yazoo City it was assessed at a valuation of $23,886.00 for each of the years 1886, 1887, 1888, 1889, 1890, 1891, 1892,

17 and 1893, and for the year 1894 at a valuation of $24,073.00, and for 1895 and 1896 each at a valuation of $23,752.00, and or 1897 at a valuation of $23,693.00.

That for the town of Tchula it was assessed at a valuation of $9,916.00 for each of the years 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, & 1894, and for each of the years 1895, 1896, and 1897 it was assessed at a valuation of $9,813.00.

That for the town of Cruger it was assessed at a valuation of $9,460.00 for each of the years 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, & 1894, and for each of the years 1895, 1896, and 1897 it was assessed at a valuation of $9,464.00.

That for the town of Lexington it was assessed at a valuation of $11,760.00 for each of the years 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, and 1894, and for each of the years 1895 and 1896 at a valuation of $12,058.00, and for the year 1897 at a valuation of $15,658.00.

That for the town of Durant it was assessed at a valuation of $3,900.00 for taxes for each of the years 1886, 1887, 1888, 1889, 1890, 1891, 1892, and 1893, and for 1894 at a valuation of $3,905.00, for 1895, 1896, and 1897 each at a valuation of $3,904.00

That for the town of Greenwood it was assessed at a valuation of $10,016.00 for the years 1886, 1887, 1888, 1889, 1890, 1891, 1892, and 1893, and for 1894 at $10,199.00, and for 1895 and 1896 at a valuation of $12,206.00, and for the year 1897 it was assessed at a valuation of $15,658.00.

That for the town of Sidon it was assessed for taxes at a valuation of $5,916.00 for each and every of said years.

All of which taxes levied and assessed as aforesaid the defendant has wholly neglected and refused to pay.

That by reason of said assessments and levies and defendant's neglect and refusal to pay its said taxes, as aforesaid, it becomes indebted and liable to pay the city of Jackson:

18 In the sum of $51.75 for the taxes of 1886, and
In the sum of $51.75 for the taxes of 1887, and
In the sum of $72.45 for the taxes of 1888, and
In the sum of $80.21 for the taxes of 1889, and
In the sum of $69.86 for the taxes of 1890, and
In the sum of $56.92 for the taxes of 1891, and
In the sum of $46.57 for the taxes of 1892, and
In the sum of $67.27 for the taxes of 1893, and
In the sum of $75.03 for the taxes of 1894, and
In the sum of $67.27 for the taxes of 1895, and
In the sum of $67.27 for the taxes of 1896, and
In the sum of $67.27 for the taxes of 1897.

That it likewise became and is indebted to the town of Flora
In the sum of $23.63 for the taxes of 1889, and
In the sum of $47.26 for the taxes of 1890, and
In the sum of $47.26 for the taxes of 1891, and
In the sum of $34.70 for the taxes of 1892, and
In the sum of $32.08 for the taxes of 1893, and
In the sum of $32.08 for the taxes of 1894, and
In the sum of $32.07 for the taxes of 1895, and
In the sum of $32.07 for the taxes of 1896.

That it likewise became and is indebted to the city of Yazoo City
In the sum of $262.74 for the taxes of 1886, and

In the sum of $262.74 for the taxes of 1887, and
In the sum of $334.40 for the taxes of 1888, and
In the sum of $286.63 for the taxes of 1889, and
In the sum of $328.30 for the taxes of 1890, and
In the sum of $322.42 for the taxes of 1891, and
In the sum of $286.63 for the taxes of 1892, and
In the sum of $268.71 for the taxes of 1893, and
In the sum of $252.76 for the taxes of 1894, and
19 In the sum of $237.52 for the taxes of 1895, and
In the sum of $237.52 for the taxes of 1896, and
In the sum of $236.93 for the taxes of 1897.
And it likewise became and is indebted to the town of Tchula
In the sum of $59.49 for the taxes of 1889, and
In the sum of $49.58 for the taxes of 1890, and
In the sum of $49.56 for the taxes of 1891, and
In the sum of $49.58 for the taxes of 1892, and
In the sum of $49.58 for the taxes of 1893, and
In the sum of $49.58 for the taxes of 1894, and
In the sum of $49.06 for the taxes of 1895, and
In the sum of $49.06 for the taxes of 1896, and
In the sum of $49.06 for the taxes of 1897.
And it likewise became and is indebted to the town of Cruger
In the sum of $47.32 for the taxes of 1895, and
In the sum of $47.32 for the taxes of 1896, and
In the sum of $47.32 for the taxes of 1897.
And it likewise became and is indebted to the town of Lexington
In the sum of $117.60 for the taxes of 1886, and
In the sum of $141.12 for the taxes of 1887, and
In the sum of $117.60 for the taxes of 1888, and
In the sum of $152.88 for the taxes of 1889, and
In the sum of $052.88 for the taxes of 1890, and
In the sum of $141.12 for the taxes of 1891, and
In the sum of $117.60 for the taxes of 1892, and
In the sum of $129.36 for the taxes of 1893, and
In the sum of $52.92 for the taxes of 1894, and
In the sum of $54.26 for the taxes of 1895, and
In the sum of $54.26 for the taxes of 1896, and
In the sum of $352.305 for the taxes of 1897.
20 And it likewise became and is indebted to the town of Durant
In the sum of $19.50 for the taxes of 1886, and
In the sum of $19.50 for the taxes of 1887, and
In the sum of $19.50 for the taxes of 1888, and
In the sum of $19.50 for the taxes of 1889, and
In the sum of $19.50 for the taxes of 1890, and
In the sum of $19.50 for the taxes of 1891, and
In the sum of $19.50 for the taxes of 1892, and
In the sum of $19.50 for the taxes of 1893, and
In the sum of $19.52 for the taxes of 1894, and
In the sum of $19.52 for the taxes of 1895, and
In the sum of $19.52 for the taxes of 1896, and
In the sum of $33.18 for the taxes of 1897.

And it likewise became and is indebted to the town of Greenwood
In the sum of $30.04 for the taxes of 1887, and
In the sum of $45.07 for the taxes of 1888, and
In the sum of $35.05 for the taxes of 1889, and
In the sum of $30.04 for the taxes of 1890, and
In the sum of $25.04 for the taxes of 1891, and
In the sum of $20.03 for the taxes of 1892, and
In the sum of $50.08 for the taxes of 1893, and
In the sum of $50.09 for the taxes of 1894, and
In the sum of $109.54 for the taxes of 1895, and
In the sum of $109.85 for the taxes of 1896, and
In the sum of $140.92 for the taxes of 1897.
And it likewise became and is indebted to the town of Sidon
In the sum of $14.79 for the taxes of 1893, and
In the sum of $14.79 for the taxes of 1894, and
In the sum of $14.79 for the taxes of 1895, and
In the sum of $14.79 for the taxes of 1896, and
$14.79 for the taxes of 1897.

21 That the total amount due and owing to the city of Jackson for all of said years is..... $773.62
That the total amount due Flora is..... 281.15
That the total amount due Yazoo City is..... 3,336.62
That the total amount due Tchula is..... 454.55
That the total amount due Cruger is..... 141.96
That the total amount due Lexington is..... 1,583.90
That the total amount due Durant is..... 239.74
That the total amount due Greenwood is..... 677.69
That the total amount due Sidon is..... 73.95

That the total amount of all the taxes for all of said cities, towns, and villages for all of said years is the sum of nine thousand dollars.

That said assessors and tax collectors negligently failed and refused to assess and collect the taxes due their respective cities and towns.

Wherefore plaintiff says that by reason of the neglect and refusal of the Yazoo & Mississippi Valley Railroad Company to pay said taxes which were properly levied and assessed against it by and for said several cities, towns, and villages, and by virtue of the authority vested in plaintiff as revenue agent, under the laws of the State of Mississippi, an action has accrued to plaintiff against it to sue for and collect said sum of nine thousand dollars, together with interest, damages, and cost.

And plaintiff demands from said assessors and tax collectors the amount of his commission as revenue agent, to wit, twenty per cent. of the amount due each of said cities and towns from the assessor and tax collector qualified and acting therefor, as aforesaid.

Wherefore plaintiff brings this suit against the Yazoo & Mississippi Valley Railroad Company, prays judgment for said sum of nine thousand dollars, interest and cost, and against said other de-

fendants he prays judgment for the amount of his said com-
22 pensation on the amount found due to the respective towns wherein they are qualified and acting as aforesaid.

W. A. HENRY AND
WILLIAMSON & POTTER,
Att'ys for Plaintiff.

Filed and summons issued to Hinds county February 9th, 1898.
F. A. NEAL, *Clerk*,
By W. J. BROWN, *D'y Clerk.*

Summons to Hinds County.

The State of Mississippi to the sheriff of Hinds county, Greeting:

We command you that you summon The Yazoo & Mississippi Valley Railroad Company, D. P. Porter, Jr., tax collector of the city of Jackson; A. G. Moore, assessor for the city of Jackson; F. C. Dunn, tax collector and assessor for the town of Flora; E. J. Poursine, tax collector and assessor for the city of Yazoo City; E. C. Thornton, tax collector and assessor for the town of Thornton; W. H. Madden, tax collector and assessor for the town of Tchula; J. H. McGee, tax collector and assessor for the town of Cruger; R. E. Wilburn, tax collector and assessor for the town of Lexington; W. H. Mullen, tax collector and assessor for the town of Durant; J. L. Gillespie, tax collector and assessor for the town of Greenwood; J. T. Kenehoffer, tax collector and assessor for the town of Sidon, if to be found in your county, so that they be before the circuit court to be holden in and for the first district of said county, at the courthouse thereof, in the city of Jackson, on the second Monday of July, 1898, to answer the amended declaration of Wirt Adams, State revenue agent, plaintiff, against said defendants, now on file in the clerk's office of said court, and have then and there this summons.

23 Witness the Honorable Robert Powell, judge of the seventh judicial district of said State, the second Monday of January, 1898, and seal of said court.

Issued the 9th day of February, 1898.

[SEAL.] By W. J. BROWN, *D.*,
F. B. NEAL, *Clerk.*

The declaration on file is founded on a suit for taxes for the years 1886 to 1897, inclusive, for municipal taxes due the towns along the line of said railroad company and against the defendants other than said railroad company for the amount of said revenue agent's compensation. The amount actually demanded in this suit is the sum stated in said declaration and lawful interest and costs.

Judgment will be demanded at return term.

WILLIAMSON & POTTER, *P. Q.*

Amended declaration filed when summons issued.
F. B. NEAL, *Clerk*,
By W. J. BROWN, *D. C.*

To be served on all the defendants in your county except the Y. & M. V. R. R. Co., who are already in court.

F. B. NEAL, *Clerk*,
By W. J. BROWN, *D'y Clerk*.

Executed personally upon D. P. Porter, city collector, and A. G. Moore, city tax assessor, in person and by copy, June 15, 1898.

W. T. RATLIFF, *Sheriff*,
By E. Y. McKAY, *D. S.*

Pleas.

STATE OF MISSISSIPPI,
County of Hinds, First District.

In the Circuit Court, at the June Term.

WIRT ADAMS, State Revenue Agent,
v.
THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY. } 3108.

24 1st plea. Comes the defendant herein, by its attorneys, and for its plea to the declaration herein filed against it says that it does not owe the said several sums of money in said declaration or any of them in manner and form as in said declarations is alleged; and of this the defendant puts itself upon the country. Wherefore, &c.

MAYES & HARRIS,
Attorneys for the Defendant.

2nd plea. Comes the defendant herein, by its attorneys, and for a further plea to the declaration and the amended declaration herein filed against it, in so far as the same demand taxes for the years 1892 to 1897, inclusive, says that the said defendant is a corporation of the State of Mississippi, incorporated by and organized under an act of the legislature of this State entitled "An act incorporating the Yazoo and Mississippi Valley Railroad Company and declaring its powers," approved on the 17th day of February, A. D. 1882; that the property herein described as the property on and against which the said pretended assessment and levies of taxes sued for were made is property acquired by said defendant under its charter, and is property necessary and incident to the full exercise of the powers in said charter granted, and does not include compresses or oil mills; that the railroad of said defendant was completed to the Mississippi river on the 25th day of October, 1892, in the manner following: that on the said 25th day of October, 1892, the Louisville, New Orleans & Texas Railway Company, organized under certain laws of the State of Mississippi, and operating and owning a line of railroad from the city of Memphis, in the State of Tennessee, and running through the State of Mississippi north and south, near the Mississippi river, paralleling the same in a general way, and this defendant, acting under powers con-

tained in their respective charters, were consolidated in such manner that the said Louisville, New Orleans & Texas Railway Company was merged into the said defendant by consolidation, and the franchises and rights and property and railroads of said Louisville,
25 New Orleans and Texas Railway Company became the franchises and rights and property and railroads of this defendant, and were managed and controlled by the same; and said Louisville, New Orleans & Texas Railway Company at the time of said consolidation and merger had constructed and was then the owner of certain branches which reached the Mississippi river, to wit, one branch which ran westerly from the main line at Harriston, in Jefferson county, and reached the said river at Natchez, in Adams county; another branch which ran westerly from the main line at Leland, in Washington county, and reached the Mississippi river both at Greenville, in Washington county, and at Huntington, in Bolivar county, opposite Arkansas City, of the State of Arkansas; and another branch which ran westerly and southerly from Lula, in Coahoma county, on the main line, and reached the Mississippi river both at Rosedale, in Bolivar county, and Friar's Point, in Coahoma county, and that the main line itself of said Louisville, New Orleans & Texas railway reached the Mississippi river at Vicksburg, in Warren county; and the said Harriston branch, first mentioned above, crossed said main line at Harriston and ran in a northeasterly direction to Jackson, in Hinds county, where it made connection with the railroad theretofore built and put into active operation by this defendant under its own original charter cited above, running from Jackson aforesaid northerly to Parsons, in Grenada county, and penetrating the counties of Madison, Yazoo, Carroll, Holmes, and Leflore, whereby the said railroad from Jackson to Parsons, being the railroad about which the taxes sued for herein are demanded, was connected with the entire system that was of the said Louisville, New Orleans and Texas Railway Company, and through that system with the Mississippi river.

Wherefore, etc.

MAYES & HARRIS,
Att'ys for Def't.

3rd plea. And the said defendant, for a further plea as to the taxes demanded in and by said declaration and said amended declaration, on account of and for the use of the city of Jackson, says
26 that the said defendant is a corporation of the State of Mississippi, incorporated by and organized under an act of the legislature of this State entitled "An act incorporating the Yazoo & Mississippi Valley Railroad Company, and declaring its powers," approved the 17th day of February, 1882; that after said company was organized, but before its line was finally located and constructed, the authorities and people of the said city were desirous of obtaining and influencing said company to adopt said city for its south eastern terminus—that is to say, its terminus on the line of the then Chicago, St. Louis and New Orleans railroad; and in order to induce the said company so to do, the board of mayor and aldermen

of the said city duly and regularly adopted and passed an ordinance in the words and figures following:

"SECTION 1. Be it enacted by the board of mayor and aldermen of the city of Jackson, That the property of the C. St. L. & N. O. R. R. Company, and of the Yazoo and Mississippi Valley R. R. Company, used in maintaining and operating said roads within the city limits, is hereby released from all city taxation for twenty years from date: Provided, that the Yazoo and Mississippi Valley railroad select Jackson for its southeastern terminus; and provided further that the work on said road be commenced within one year and completed within three years to Yazoo City.

"SECTION 2. Be it further rodained: That this ordinance be *if* force and effect from and after its adoption.

"Adopted May 5, 1882."

Said ordinance was accepted by this defendant, and Jackson was selected for the southeastern terminus of said railroad, and work on said road was completed to Yazoo City within three years from the said adoption, and the property against and *the* account of which the taxes herein demanded were assessed and levied is the property of said road in maintaining and operating the same within the limits of said city.

Wherefore the said defendant, etc.

MAYES & HARRIS
Att'ys for Def't.

Filed February 26th, 1898.

F. B. NEAL, *Clerk*,
By W. J. BROWN, *D'y Clerk.*

27 *Demurrer to Defendant's Second Plea to Declaration.*

STATE OF MISSISSIPPI,
County of Hinds.

In the Circuit Court, 1st Dist., said County.

WIRT ADAMS, State Revenue Agent,
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY. } No. 3108.

Demurrer to defendant's 2nd plea.

Comes the plaintiff in the above-styled cause and demurs to the second plea filed by defendant to the declaration herein, and for cause of demurrer he assigns the following reasons:

1. Said plea does not show that defendant's railroad has ever been completed to the Mississippi river, as provided in its charter of incorporation.
2. Said plea is insufficient in law.
3. Said plea sets up no valid defense to plaintiff's action.

Wherefore plaintiff prays judgment, &c.

WILLIAMSON & POTTER,
Attorneys for Plaintiff.

Filed April 13th, 1898.

F. B. NEAL, *Clerk*,
By W. J. BROWN, *D'y Clerk.*

28 *Demurrer to Defendant's Third Plea to Declaration.*

STATE OF MISSISSIPPI,
1st Dist., Hinds County.

In the Circuit Court in and for said District and County.

WIRT ADAMS, State Revenue Agent,
v.
YAZOO & MISSISSIPPI VALLEY R. R. Co. } No. 3108.

Comes the plaintiff and, as to the third plea by the defendant pleaded to his declaration, says—

That the matters therein contained are not sufficient in law to bar him from having his aforesaid action or any part thereof.

Wherefore plaintiff demurs to said third plea, and for causes of demurrer assigns:

1. The board of mayor and aldermen were without authority of law to grant the exemption claimed by said plea.

2. Said ordinance is violative of the constitutional provision that taxation shall be equal and uniform.

3. Said ordinance is in violation of the provisions of the constitution that all property of corporations for pecuniary profit shall be subject to taxation the same as that of individuals.

4. Said ordinance is *nundum factum* and void.

Wherefore plaintiff prays the judgment of the court, &c.

WILLIAMSON & POTTER,
Att'ys for Plaintiff.

Filed April 13th, 1898.

F. B. NEAL, *Clerk*,
By W. J. BROWN, *D'y Clerk.*

Agreed Statement of Facts.

In the Circuit Court, 1st District of Hinds County, State of Mississippi.

WIRT ADAMS, State Revenue Agent, &c.,
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY.

To save costs, the following really undisputed matters involved in this suit are admitted by the following agreed statement of facts:

It is agreed between the respective parties to the above cause that the defendant, The Yazoo & Mississippi Valley Railroad Company, was chartered in the year 1882 under the laws of the State of Mississippi, and that before the year 1886 it had constructed its
29 railroad and operated the same from the city of Jackson to the town of Parsons, and that the same ran through all the

cities, towns, and villages mentioned and set out in the declaration and amended declaration, and that said railroad has never been completed to the Mississippi river otherwise than in the manner set out in defendant's second plea, to wit, by the consolidation with the Louisville, New Orleans and Texas Railroad Company, whereby defendant came into control of said L., N. O. & T. R'y and the road from Jackson to Natchez, formerly known and chartered as the Natchez, Jackson & Columbus Railroad Co., which was owned just prior to the consolidation by the L., N. O. & T. R'y Co., and by the consolidation went into defendant's possession.

That defendant owns road-beds, tracks, and switches, and depot buildings, and operates its railroad in and through the several towns mentioned in the declaration and amended declaration, and have so owned and held said property from 1885 up to the present time, and that the same has been assessed for taxes for all of said cities, towns, and villages for the years 1886 to 1897, inclusive; that the tax levies were made for all of said years by said *said* several cities, towns, and villages, as stated in the declaration and amended declaration.

It is further agreed that on the hearing of this cause maps may be introduced or obtained and used by the court showing the location of defendant's road as constructed and the location of the roads coming into its possession by said consolidation.

MAYES & HARRIS,
Att'ys for Def't.

WILLIAMSON & POTTER,
Att'ys for Plaintiff.

Filed April 13th, 1898.

F. B. NEAL, *Clerk*,
By W. J. BROWN, *D'y Clerk.*

Defendant's Fourth Plea.

30 Defendant's fourth plea.

STATE OF MISSISSIPPI,
County of Hinds, First Dist.

WIRT ADAMS, State Revenue Agent,
vs.
YAZOO & MISS. VALLEY RAILROAD CO.

Comes the defendant herein, and for a fourth plea to the declaration herein filed against it says that prior to the assessment of the taxes in said declaration mentioned, to wit, on the — day of ——, 1882, this defendant executed to the Illinois Central Railroad Company, a corporation of the State of Illinois, a lease of all the railroad property in said declaration mentioned for and during a term of fifty years from the date thereof, and on said day did deliver said railroad property to said Illinois Central Railroad Company under and pursuant to said lease, and from that time forth continuously

until the bringing of this suit the said Illinois Central Railroad Company held and operated said railroad and property under said lease, and it was so holding and operating the same at the times respectively of each and all the assessments and levies in said declaration mentioned.

And defendant further avers that under and by said lease said Illinois Central Railroad Company agreed and promised and became obligated to pay of- and discharge all taxes legally assessed and levied and payable by the said Yazoo & Mississippi Valley Railroad Company or against and upon and because of said railroad and property during the continuance of said lease.

(II.)

And defendant further avers that under and by virtue of the said charter of this defendant granted by the State of Mississippi the sais railroads and property in said declaration were, at the time of the execution of said lease, and they have been continuously until the bringing of this suit, and were at the time of the
31 assessments and levies mentioned in said declaration exempted from any and all municipal taxation, and the power and the right of the legislature of said State to make said exemption had been judicially recognized and declared by the supreme court of said State since *since* the year 1888 in and by the case of Mississippi Mills *v.* Cook, reported in 56th volume of Mississippi Reports, and said exemption entered into and constituted a part of the lease aforesaid and a part of the obligation of the said Illinois Central Railroad Company thereunder, and also a part of the charter contract of the defendant as between it and said State whereunder the def-ndant did accept said charter and build, and construct, and equip, and operate, by itsself and its lessee, the said railroads and property.

And the said defendant further avers that the said exemption by said charter conferred has never been repealed by the legislature of said State, but, on the contrary, at the sessions of said legislature held in the yeers 1886, 1888, 1890, and 1896 respectively members of that body introduced bills therein whereby said exemption should be repealed, but said legislatures each and respectively refused to pass the same or any of them, and said charter exemption still stands unrepealed and not in ant way modified by said State legislature.

All of which defendants is ready to verify. Wherefore, &c.

MAYES & HARRIS,
Att'ys for Def't.

Filed July 1, 1898.

F. B. NEAL, *Clerk*,
By W. J. BROWN, *D'y Clerk.*

Demurrer to Defendant's Fourth Plea.

STATE OF MISSISSIPPI,
County of Hinds.

In the Circuit Court, 1st Dist. of said County.

32 WIRT ADAMS, State Revenue Agent,
vs.
THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY. } No. 3108.

Demurrer to defendant's fourth plea.

Comes the plaintiff in the above-styled cause and demurs to the fourth plea of defendant this day filed to the declaration herein, and for cause of demurrer he assigns the following reasons:

1. Because the assessment by the proper authorities was a final adjudication of liability as to ownership.
2. Because the liability of *of* the defendant in this proceeding is not affected by any lease or other private arrangement that it may have had with any stranger.
3. Because the said exemption was conditional and said plea does not set up or show that the same was ever earned.
4. Because the questions involved in [illegible] suit do not involve the question of the power of the legislature to [illegible]rant exemption and does not involve the questions raised by the overruling of the said Cook case.
5. Because said plea is insufficient in law.
6. Because said plea sets up no defense to plaintiff's suit.

And for other reasons to be assigned at the hearing.

WILLIAMSON & POTTER,
Att'ys for Plaintiffs.

Filed July 1st, 1898.

F. B. NEAL, *Clerk*,
By W. J. BROWN, *D'y Clerk.*

Demurrer to 3rd Plea Sustained.

June Term, 1898, July 1st, 1898.

WIRT ADAMS, State Revenue Agent,
vs.
THE YAZOO & MISSISSIPPI VALLEY R. R. Co. } 3108.

Came to be heard the demurrer of plaintiff to the third
33 plea of defendant filed February 26, 1898, and the court, having fully heard and considered the same, doth now order and adjudge that said demurrer be, and the same is hereby, sustained.

Demurrer to 4th Plea Sustained.

June Term, 1898, July 1st, 1898.

WIRT ADAMS, State Revenue Agent,
vs.
THE YAZOO & MISSISSIPPI VALLEY R. R. C. } No. 3108.

Came to be heard the demurrer of plaintiff to the fourth plea of defendant to the declaration, and the court, having fully heard and considered the same, doth now order and adjudge that said demurrer be, and the same is hereby, sustained.

Dismissed as to Assessors and Collectors.

June Term, 1898, July 1st, 1898.

WIRT ADAMS, State Revenue Agent,
vs.
THE YAZOO & MISSISSIPPI VALLEY RAILROAD Co. } 3108.

This cause coming on for trial, and it appearing that the assessors and tax collectors mentioned in the declaration were not guilty of any fault or wrong in the matter of the assessments or collections, the said cause is dismissed as to them.

Jury and Verdict.

June Term, 1898, July 1st, 1898.

WIRT ADAMS, State Revenue Agent,
vs.
THE YAZOO & MISSISSIPPI VALLEY RAILROAD Co. } No. 3108.

Come the parties, by their attorneys, and, the issue being joined, also came a jury of good and lawful men, to wit, J. B. Ligon
34 and 11 others, who, being duly elected, empaneled, and sworn, and the issue submitted to them, upon their oaths do say: We, the jury, find for the plaintiff, for the use and benefit of the towns mentioned in the declaration, as follows, to wit:

For the city of Jackson the sum of	$773.62
For the town of Flora	281.15
For the town of Yazoo City the sum of	3,336.32
For the town of Tchula	434.55
For the town of Cruger	141.96
For the town of Lexington	1,583.90
For the town of Durant	239.74
For the town of Greenwood	667.69
For the town of Sidon	73.95

The aggregate finding for plaintiff being the sum of seven thousand five hundred and sixty-two dollars and eighty-eight cents. It

is therefore considered by the court and so ordered and adjudged that the plaintiff, Wirt Adams, State revenue agent, for the use and benefit of the towns mentioned in the declaration, do have and recover of and from the defendant, The Yazoo & Mississippi Valley Railroad Company, the sum of seven thousand five hundred and sixty-two dollars and eighty-eight cents ($7,562.88), as found by the jury, with interest thereon, at the rate of six per centum per annum, from the date of this judgment, together with all costs in this behalf expended, for all of which let execution issue.

Motion for New Trial.

June Term, 1898, July 8th, 1898.

WIRT ADAMS, State Revenue Agent,
vs.
THE YAZOO & MISSISSIPPI VALLEY RAILROAD CO. } No. 3108.

The defendant herein moves the court to set aside the verdict of the jury herein rendered and grant a new trial for the following reasons:

35 1. The court erred in overruling the objection of defendant to the evidence offered by plaintiff and admitting such evidence.

2. The court erred in sustaining the objection of plaintiff to the evidence offered by defendant and excluding such evidence.

3. The court erred in granting the peremptory instruction for the plaintiff.

4. The court erred in refusing the peremptory instruction asked by defendant.

5. Said verdict is contrary to law.

6. Said verdict is contrary to the evidence.

7. Said verdict is contrary to the law and the evidence.

MAYES & HARRIS, *For Motion.*

WILLIAMSON & POTTER, *Contra.*

Filed and entered July 8th, 1898.

F. B. NEAL, *Clerk,*
By W. J. BROWN, *D'y Clerk.*

Overruled.

Motion for New Trial Overruled.

June Term, 1898, July 8th, 1898.

WIRT ADAMS, State Revenue Agent,
vs.
THE YAZOO & MISSISSIPPI VALLEY RAILROAD CO. } No. 3108.

Came on to be heard the motion of defendants to set aside the verdict and judgment herein and to grant a new trial, and the court having duly considered the same, it is ordered and adjudged

that said motion be, and the same is hereby, overruled; to which action of the court the defendants then and there excepted, and their exception was allowed.

36 *Bill of Exceptions.*

WIRT ADAMS, State Revenue Agent,
vs.
THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY. } No. 3108.

Bill of exceptions.

Be it remembered that on the 1st day of July, 1898, the same being a day of the regular term of the circuit court in and for the 1st district of Hinds county, Mississippi, the above-styled cause was regularly called and came on for trial, and thereupon came a jury of good and lawful men, to wit, J. B. Ligon and eleven others, who, being duly elected, — empaneled and sworn and the pleadings in the case read and presented to them; whereupon the following evidence was introduced for and on behalf of the plaintiff, to wit:

Plaintiff introduced in evidence and read to the jury the agreed statement of facts filed in the case, which is in the words and figures following, to wit: (Clerk will here copy same.) (See Record, pp. 10 & 11.)

And upon the above evidence plaintiff rested.

Whereupon defendant offered and read in evidence the following, to wit:

(Clerk will here copy the charter of the incorporation.)

37

CHAPTER DXLI.

An act incorporating the Yazoo and Mississippi Valley Railroad Company and declaring its powers.

Work of great public importance.

Whereas, the construction of railroads to, in, through and along the Mississippi River basin, and the Yazoo and Sunflower River basins, penetrating these and other alluvial lands in this State, west of the Chicago, St. Louis and New Orleans railroad, and connecting them by railroads and branches with other railroads west, east, north and south, is deemed and hereby declared to be a work of great public importance and in strict accordance with the true policy and interest of this State, should be encouraged by legislative sanction and liberality; and,

Physical difficulties.

Whereas, the physical difficulties of constructing and maintaining railroads to, across, along or within either the Mississippi, Sunflower, Deer Creek or Yazoo bottoms or basins, or the other alluvial lands herein referred to, are such that no private company has so far been able to establish a railroad and branches developing said basins and alluvial lands, and connecting them with the railroad system of the country:

Induce investment of capital.

Now, therefore, in order to induce the investment*ment* of capital in the construction, maintenance and operation of such a railroad and branches, and thus develope the resources and wealth of this State:

SECTION 1. *Be it enacted by the legislature of the State of Mississippi*, That R. C. Shepherd, F. Barksdale, J. Z. George, Wm. R. Pillow, F. A. Montgomery, G. W. Faison, John Willis, R. P. Neely, W. H. H. Green, John W. Shields, W. H. Osborn, J. C. Clarke, W. K. Ackerman, L. V. F. Randolph, A. R. Van Nest, F. Sturges, Jno. Elliott, W. W. Gebhard, James Fentress, W. H. Bayard, R. N. Miller, W. P. Harris, R. H. Thompson, James Trotter, L. E. Simonds, H. Q. Bridges and H. S. Foote, together with those who may hereafter become stockholders, their successors and assigns, and the assigns of such assigns forever, be and they are hereby created a body corporate, under the name and style of the Yazoo and Mississippi Valley Railroad Company, and as such shall have perpetual succession; and said corporation, its successors and assigns, are hereby forever

Incorporators.

Style of company.

38 authorized and made capable in law to have, hold, purchase, receive and enjoy

real and personal estate in this and other State or States, whether acquired by way of security or in satisfaction of debt, or by donation, purchase, devise or otherwise, and to hold, use and enjoy all of such real estate in fee-simple or otherwise, and the same or any part thereof to sell, rent, lease, mortgage or otherwise dispose of or encumber; to sue and be sued, plead and be impleaded; to use a common seal, and the same to alter, break or renew at pleasure.

Powers and privileges.

SEC. 2. *Be it further enacted*, That the said corporation shall also have, and it is hereby authorized and invested with the right and power to build and construct, and thereafter to use, operate, own and enjoy a railroad or railroads, with one or more tracks, into, along, and across that part of the State of Mississippi lying between the Mississippi river and the Chicago, St. Louis and New Orleans railroad, on such line or lines as shall be deemed best by the board of directors of the company hereby chartered; one of said lines or a branch therefrom to reach the Mississippi river at or near a point opposite Arkansas City if practicable, so as to connect such point on the east bank of the Mississippi river with some point or points on the line of the Chicago, St. Louis and New Orleans railroad; one of said lines of railroad, or a branch therefrom, to be extended to or pass through Yazoo City, Mississippi; and said company shall have the right and power, and are hereby authorized to build one or more branches or lines of railroads between the Mississippi river and Deer creek, and between Deer creek and the Sunflower river, and between the Sunflower and Yazoo rivers, in the direction of or to the north line of this State, and extend the same, or any one thereof, in the direction of or to the south boundary line of this State, as shall from time to time, in the judgment of said company, be deemed proper; and shall also be authorized to construct and operate such spurs or laterals from or along such main line or branches not exceeding one hundred miles in length, as may from time to time be necessary or proper to fully develop said country lying west of the Chicago, St. Louis and New Orleans railroad, and east of the Mississippi river, in this State; and the said company, as soon as and whenever, from time to time, they have located said line or lines of railroad or branches, spurs or laterals thereto, or any of them, shall file in the

One or more tracks.

Where roads may be built.

Spurs or laterals.

Shall file statement.

office of the secretary of state a statement showing the general line thereof as far as the same has up to that time been located.

Capital stock.

SEC. 3. *Be it further enacted*, That the capital stock of said company shall be five millions of dollars, but the same may be, from time to time, increased to a sum or sums not exceeding the amounts actually expended by said company in constructions, completions, equipments and additions to said railroads and property; and said company may issue any part of said stock as preferred stock, and fix the relative rights of common and preferred stock as to dividends and income, and they may issue said stock or any part thereof as fully paid and not liable to calls; and also such bonds and obligations as they may from time to time determine; said capital stock shall be in shares of one hundred dollars each, and each share thereof shall entitle the holder to one vote, under such regulations as the company may in its by-laws provide; said stock shall be deemed personal property, transferable by assignment agreeably to the by-laws of said company, and may be owned and voted by any person, association or corporation of this or any other State or country, in person or by proxy, with the same power as such stockholder (though an alien or foreigner,) to bring and maintain suits, or do other acts, in his right as such stockholder, as if a resident and citizen of this State.

Preferred and common stock.

In shares of $100.

Rights of stock.

SEC. 4. *Be it further enacted*, That the affairs of said company shall be managed by a board of directors and such officers and agents under them as the interests of the company may, from time to time require; such board of directors shall consist of such a number of members as the company may determine, from time to time, but not less than five; one of whom shall be a resident of the State of Mississippi; and said board shall have power to appoint an executive committee with full power to act in their stead and place, at all times when said board of directors is not in session; the persons named in the first section of this act, may of their number organize a board of directors who may open books of subscription to the capital stock of said company, and when five hundred thousand dollars of stock has been subscribed, shall call a meeting of the stockholders or subscribers thereto, for the election of a board of directors; the term of office of director of said company shall be three years, and until his successor is elected and qualified,

Directors and other officers.

Executive committee.

Books of subscription.

Director for three years.

but in the first election of directors by the stockholders or subscribers to the capital stock as above provided, part of said directors shall be elected for one year, part for two years and part for three years, as may be determined at said meeting; and in each subsequent year a number of directors shall be elected by the stockholders equal to the number of directors, whose term of office expires in such year; and said board of directors may, of their number, elect a president and fix his term of office and compensation; and may provide for the election of or appointment and removal of such other officers and agents as, and when they please, and may create and abolish such offices, fix the duration and compensation thereof, from time to time, as may seem best, and may adopt, modify or alter by-laws for said company at their will, not inconsistent with the laws of this State, and do all other acts proper or necessary to be done in the management of the affairs of said company.

How directors elected.

President.

By-laws.

May mortgage property.

SEC. 5. *Be it further enacted*, That said company may, from time to time, mortgage or convey in trust any or all of its property, real, personal and mixed, of any and every description whatsoever, then owned or thereafter to be acquired, and also all or any of its rights, powers, privileges, liabilities, immunities and franchises whether then owned, possessed and enjoyed or thereafter to be acquired, including its rights to be a corporation; and under such deed or deeds of trust or mortgage secure, execute and dispose of the mortgage bonds of said company, to such amounts and maturing at such times and bearing such interest as it may deem best; said company may also execute a mortgage or mortgages and trusts as aforesaid, to secure bonds or obligations of other railroad companies, or may endorse the bonds of any other railroad company or companies; or in any other manner guarantee such bonds and secure the same by a mortgage or mortgages on its own property and franchises, then owned or thereafter to be acquired, as fully as it could do if the bonds were issued by it as aforesaid; said company may consolidate with any other railroad company in or out of the State of Mississippi upon such terms as the consolidating companies may agree upon; and it may lease its railroads and all its property and franchises, rights, powers, privileges and immunities then owned or thereafter to be acquired, or lease

Endorse bonds of other companies.

Consolidate with other companies.

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other railroads in or out of this State, for a term of years or in perpetuity, and upon any such consolidation, the consolidated company shall have and enjoy all the property, rights, privileges, powers, liberties and immunities and franchises herein granted; but such consolidation shall not have the effect of exempting from taxation the railroad or property owned by such other consolidating company prior to its consolidation with the company hereby chartered; nor of exempting from taxation any property which the consolidated company may, after such consolidation acquire under the provisions of the charter of such other consolidating company; and in case of a lease, the *lease* shall, so far as the terms of the lease may allow, enjoy and possess all the property, rights, powers, privileges, liberties, immunities and franchises which the lessor had as to the leased premises; the said company is also authorized to do an express business over its own and other lines of railroad and steamboats or other conveyances in and out of this State; and to acquire or put up, use and operate a line or lines of telegraph in this and other State or States, and to acquire, hold and enjoy all such property as may be proper, necessary or convenient in doing the said express or telegraph business: *Provided*, that by such consolidation the maximum in section six applies only to roads hereafter built.

Rights of consolidated company.

As to exemption from taxation.

In case of a lease.

Express and telegraph business.

Maximum in sec. 6.

SEC. 6. *Be it further enacted*, That said company shall have and possess the power of fixing from time to time, by its board of directors, the rates at which it will do express and telegraph business, and shall transport — other express companies as may apply for transportation over its line at a just and reasonable rate of compensation, and also the rates at which said company will transport persons or property over its railroads and branches: *Provided*, said last-mentioned rates shall not exceed four cents per mile for each passenger, nor exceed the following rates on freight: Sixty-five cents per hundred pounds for transporting first or second class freights one hundred miles or less; forty-five cents per hundred pounds for transporting third or fourth class freights one hundred miles or less; thirty-two cents per hundred pounds for transporting fifth or sixth class freights one hundred miles or less: (reference being had herein to the classification of freights now recognized and observed on the existing railroad line between New Orleans

Rates for express and telegraph business.

Rates for passengers and freights.

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No package less than 25 cents

and Jackson, Mississippi). But in no case shall the railroad company be limited to a less charge than twenty-five cents for the transportation of any passenger, or parcel, package or article, however short the distance. The rates so established from time to time by the said board of directors for transporting persons or property as a railroad company, not exceeding the maximum rates for railroad business, as above set out, may be charged and collected by said company: *Provided, further,*

Special rates for lumber, coal, iron, etc.

that as to lumber, coal, iron, salt, machinery, fertilizers, bricks, lime, agricultural implements, steam-engines and boilers, and other freights transported in car-loads, rates may be made by special agreements between the shippers and the company, for such sums as they may agree upon;

Same rates to all shippers.

but in all such cases the same rates shall be given to any shipper of an equal quantity, at the same time, under similar circumstances of similar freight between the same points. Nothing herein contained shall prevent the railroad company

Rates below maximum.

from making such reduction of rates below the maximum herein fixed as it may elect to do, for the purpose of fostering, aiding and developing the resources of the country, penetrated by its railroads and branches.

Right of way and materials granted.

SEC. 7. *Be it further enacted*, That the right of way is hereby granted said company to pass in and through the State of Mississippi, with said railroads, branches, spurs and laterals aforesaid, and to enter upon and use all lands, rocks, timber, earth, sand, gravel, water or other materials, which may be found on the routes selected, and which may belong to the State of Mississippi, and be convenient or necessary for the use of said railroads; and wherever said railroads or the branches, spurs or laterals aforesaid are located, over any lands belonging to this State, the title in fee-simple,

100 feet on each side of track.

to one hundred feet on each side of the center of said railroad track or tracks shall vest in said company, its successors and assigns; and said company is hereby authorized to cause such examinations and surveys to be made as shall be deemed necessary to determine the most eligible route or routes upon which to locate its line or lines, branches, spurs or laterals, and to enter upon and appropriate all such lands and materials as may be private property, which may be convenient or necessary for said road, together with one hundred feet on each side of the

center of such road, laterals, branches, or spurs; and in case the company fails to agree with the owners of such lands or materials upon the price to be paid for the fee-simple title thereto, or in case the owner is under any disability in law to contract, or is absent from the county where such lands or materials are situate, or is unknown, the company may proceed to condemn such lands or materials as provided in section eight of the act, approved March 10, 1852, entitled "An act to incorporate the Mississippi Central Railroad Company," with all the rights and powers as therein provided; and upon such condemnation being had, the title in fee-simple to such lands or materials, shall vest in the said company, its successors and assigns. Said company is also authorized to construct, maintain and operate its said railroads, branches, spurs and laterals under, over or across any and all streams and bodies of water in this State, whether navigable or not, which lie along or across the lines selected for said railroads, branches, laterals or spurs; and to erect, use and maintain ferries and bridges over the same: *Provided*, that wherever a navigable stream or body of water is crossed by a bridge of said company, there shall be maintained a draw in such bridge sufficient to allow the passage of boats and water crafts plying such waters, which draw shall be so operated as to cause no unreasonable delay to the passage of such water craft; and the said company is also authorized and empowered, so far as this State can or may give such power and authority, to build, construct, maintain and operate of itself or with others, in or out of this State, a ferry across or a tunnel under, or a bridge over the Mississippi river at any point within this State, where its railroads, branches, laterals or spurs may reach said river, and to acquire and hold all such lands and materials as are or may be necessary or convenient for landings, wharves, inclines or approaches thereto; and it may establish such transfer landings, wharves, approaches and inclines as are or may be necessary or convenient in transferring by boat or other water craft, all or any freights, passengers, cars or rolling stock, loaded or unloaded, upon and across said Mississippi river or any other river or body of water within this State, and may own, use, operate and control of itself or others, all such steamboats, ferries or other water craft as are or may be convenient or necessary in crossing such

In case of disagreement with owner.

How lands may be condemned.

Vest title.

May build road across streams.

Draw-bridges.

Ferries and tunnels.

Transfer landings, wharves, etc.

Steamboats, ferries, etc.

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water or plying therein, so as to develop trade over its said lines of railroad.

Exempt from tax for 20 years.

Oil mills and compresses excepted.

When exemption expires.

Taxes to be paid State treasurer.

Cities and towns not to tax.

SEC. 8. *Be it further enacted*, That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State, necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi river, but not to extend beyond 25 years from the date of the approval of this act; and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by the treasurer of this State and paid into the State treasury, to be dealt with as the legislature may direct; but said company shall be exempt from taxation by cities and towns.

May insure passengers or freights.

Charges for storage.

Depots, etc.

Compresses and oil mills.

SEC. 9. *Be it further enacted*, That said company shall have power, and is hereby authorized to insure persons and property, or either, transported or to be transported over or on any part of its lines of railroad, and all other property coming, or about to come into the possession or control of said company for purposes of transportation, or incident thereto, or for storage in any of its depots, or storage-houses, or wharves, and to charge and collect reasonable compensation for such insurance or storage, but no charge for storage shall be made on freights transported by them to their several railroad depots, until the consignee has had a reasonable time in which to remove the same. And it is authorized to erect or acquire, maintain and use such depots, storage-houses, wharves, sheds, or other buildings or depositories in or out of this State, as shall be necessary or convenient in the exercise of the powers granted in this charter; and said company shall have power to construct and operate compresses and oil mills.

May build roads through towns.

SEC. 10. *Be it further enacted*, That this company be and it is hereby granted the right to run its railroads, branches, laterals or spurs into the corporate limits of any incorporated town or city, reached by the line or lines of said railroad, as they may hereafter be located, under the powers herein granted, and to build and operate such railroad tracks, across or along any streets of such incorporated municipality; *Provided*, that such part of said railroad as shall be located in, across, under or upon any such street, shall be so constructed and operated as shall not unreasonably hinder its use as a street.

Meetings and offices.

SEC. 11. *Be it further enacted*, That the board of directors, stockholders, executive committee and officers and agents of said company, may hold their meetings and transact the business of said company, in or out of this State, and may establish such offices as they may from time to time deem best, in or out of this State. And any and all acts done by said company, its officers or agents, out of this State, shall be of the same force and effect as if done within this State.

Claims for damages.

SEC. 12. *Be it further enacted*, That no mortgage executed by said company shall protect its property against the collection of claims for damages done by its engines and cars to the persons or property of citizens and residents of the State of Mississippi.

If 20 miles not built in three years.

SEC. 13. *Be it further enacted*, That unless said company shall construct and have in operation twenty miles of railroad within three years from the passage of this act, the legislature shall have the right to declare this charter forfeited.

SEC. 14. *Be it further enacted*, That all acts in conflict with this act, or any part thereof, be and the same are hereby repealed, and that this act take effect and be in force from and after its passage, the public welfare requiring it.

Approved, February 17, 1882.

46 *Lease of* 1888.

This indenture made the 31st day of March, A. D. 1888, by and between the Yazoo and Mississippi Valley Railroad Company, a corporation created under the laws of the State of Mississippi, herein designated as party of the first part, and the Illinois Central Railroad Company, a corporation created under the laws of the State of Illinois, hereinafter designated as the party of the second part, witnesseth:

1. That for the considerations hereinafter mentioned, the said The

Yazoo and Mississippi Valley Railroad Company, party of the first part aforesaid, being thereunto duly authorized by law and also by the action of its executive committee and its stockholders, doth hereby demise and lease to the Illinois Central Railroad Company, party of the second part aforesaid, the railroad and the telegraph line of the party of the first part which are now built and in operation, consisting of its railroad extending from its junction with the Chicago, St. Louis and New Orleans railroad at or near Jackson, in the county of Hinds, and State of Mississippi, thence through Yazoo City to Parsons, in the State of Mississippi, and also the railroad extending from Tchula junction through Lexington to Durant, Mississippi, in all one hundred and forty miles of railroad, more or less (it being all the railroads which the party of the first part has now in operation), including the road-bed, superstructure and rights of way of the railroads aforesaid, and the side tracks, spurs, bridges, station-houses and station grounds, engine-house and grounds, ware-houses and grounds, turn-tables, water tanks, fences and all other buildings or structures, fixtures, tools, or appurtenances of, in or to the said railroads belonging, which are now owned by the party of the first part.

Including also the engines and cars and other rolling stock of every description now owned by the party of the first part, and all and singular the easements, servitudes, hereditaments and appurtenances of said railroads and the right and franchise to use, operate and enjoy said divisions or parts of the railroad system which the party of the first part is by its charter authorized to build or acquire, being all that it has up to this time built or acquired and put in operation. Including also the franchise and right, as authorized and granted by its said charter, to fix, demand and
47 collect toll or charges for transporting passengers and freight, mail or express matter thereon, as fully as the party of the first part could under its charter do. Including also the exemption from taxation of the leased premises aforesaid under the provisions of said charter. Together with all the telegraph line, poles, wires, batteries and all its fixtures and appurtenances which are now owned and operated by the party of the first part along said railroads or elsewhere. (But this lease does not include or encumber any part or division of the railroad or telegraph line, or their appurtenances, which the party of the first part may hereafter build or acquire; or any of its lands which are now owned except those which are appurtenant to the leased premises and used as rights of way or station grounds, or which are situated within one hundred feet from the center of the main or side tracks of the railroads so leased as aforesaid; or any of its charter rights, privileges, powers, exemptions or franchises, except such as are necessary to the full enjoyment, use, control or dominion of the leased premises aforesaid by said lessee during the term of this lease.)

To have and to hold the leased premises aforesaid, with the appurtenances, unto the party of the second part aforesaid, and its successors, from the date of this indenture until and to the first day of June, A. D. nineteen hundred and fifty-two (1952).

2. And the party of the first part covenants that it will at any and at all times during the continuance of this lease, upon the reasonable request of the party of the second part, do all acts, and sign, seal, acknowledge and deliver all such further or other papers, deeds, transfers or agreements which are or may be necessary to assure and make certain unto said party of the second part the leased premises aforesaid and the possession, use, and enjoyment of every part thereof, for and during the full term of this indenture.

3. And the party of the second part hereby covenants and agrees that it will, during the term that this indenture may continue in force, operate said leased railroads and telegraph lines in compliance with the charter of the party of the first part, and will indemnify and hold harmless the said party of the first part from all and every of the liabilities or penalties which may arise from or be founded on its acts or omissions as such lessee in the use of the leased premises in anywise whatsoever; and at the termination of this lease will surrender and restore the possession and control of the leased premises to the party of the first part in as good condition as the same now are, and that as to anything included in this lease, which from any cause cannot be returned in as good condition as it now is, it will replace the same by one as good as the one which it receives under this lease.

4. The party of the second part further covenants and agrees that it will pay to the party of the first part the net earnings of said leased premises, semi-annually, to wit, on the first days of June and December in each year, and that said net earnings shall amount to at least one hundred thousand dollars per annum during the continuance of this lease, and that in case said net earnings do not amount to said last-mentioned sum it will pay such an
48 amount in addition to such year's net income as shall, together with such net income, amount to the sum of one hundred thousand dollars for that year.

5. It is covenanted and agreed by both parties hereto that this lease may be terminated upon six months' written notice by either party to the other of its desire to end the same; and at the time so fixed in said notice, if the same be six months or more from the time of the service thereof on the other party, this lease shall be as fully determined and ended as if said date was herein declared to be the end of the term of this lease.

6. The covenants and agreements hereinbefore set out are not only in behalf of and by the respective parties hereto, but also in behalf of and binding on their successors, respectively, whether the same be so expressed in each covenant or not.

In witness whereof, the Yazoo and Mississippi Valley Railroad Company and the Illinois Central Railroad Company have hereunto

set their respective names and common seals, this the day and date first above written.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY,
By STUYVESANT FISH,
[SEAL.] *President.*

Attest: JOHN ANTHON, *Secretary.*

ILLINOIS CENTRAL RAILROAD COMPANY,
By STUYVESANT FISH,
[SEAL.] *President.*

Attest: A. G. HACKSTAFF, *Secretary.*

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 10th day of April, A. D. 1888, before me, William H. Clarkson, a commissioner of the State of Mississippi, in and for the State of New York, residing in said city of New York, and notary public for New York county, personally appeared the foregoing-named Stuyvesant Fish, president of the Yazoo and Mississippi Valley Railroad Company, and John Anthon, secretary thereof, who acknowledged that they signed, sealed and delivered the foregoing instrument, on the day and year therein named, as their voluntary act and deed, and the voluntary act and deed of said company.

And the said Stuyvesant Fish and John Anthon, being duly sworn, deposed and said that they were the above-described officers of said company, that the seal affixed to the foregoing instrument purporting to be the corporate seal of said company was such corporate seal, that it was affixed thereto by order of the executive committee and the stockholders of said company, and that they signed their names thereto by the same authority as the president and secretary of said company respectively. And on the same day
49 before me also personally appeared the said Stuyvesant Fish, as the president, and A. G. Hackstaff, secretary, of the Illinois Central Railroad Company, who acknowledged that they signed, sealed and delivered the foregoing instrument as their voluntary act and deed as such officers of said company, and the voluntary act and deed of said company.

And the said Stuyvesant Fish and A. G. Hackstaff, being by me first duly sworn, they did depose and say, that he the said Stuyvesant Fish was the president of the said Illinois Central Railroad Company, that he the said A. G. Hackstaff was the secretary of the same company, that the seal affixed to the foregoing instrument was the corporate seal of said company, that it was affixed thereto by order of the board of directors of said company, and that they

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signed their names thereto by the like order as the president and secretary of said company respectively.

Witness my hand and official seals.

[Commissioner's Seal.]

WILLIAM H. CLARKSON,
Commissioner for the State of Mississippi in New York and Notary Public for New York County, N. Y.

[NOTARY'S SEAL.]

(Here follows map marked page 50.)

51 Defendant offered in evidence the journals of the legislature for the years 1886, 1888, 1890, & 1896.

Offered to show the effort to repeal the exemption in question, amongst others, and the refusal of the legislature to pass such bills.

Objected to by plaintiff. Objection sustained, and defendant excepted.

Defendant thereupon offered and read in evidence the lease of the Yazoo & Mississippi Valley Railroad Company to the Illinois Central Railroad Company; which said lease is offered in the words and figures following, to wit: (By agreement of counsel the above-mentioned lease or exemption of taxation granted it by the city of Jackson on the — day of ——, 1892, which is in the words and figures following, to wit:)

(Clerk will here copy same.)

Exemption from Taxation by the City of Jackson.

SECTION 1. Be it ordained by the board of mayor and alderman of the city of Jackson:—

That the property of the C. St. L. & *M.* O. R. R. Company, and of the Yazoo & Mississippi Valley R. R. Company, used in maintaining and operating said roads within the city limits, is hereby released from all city taxation for twenty years from date; provided, that the Yazoo & Mississippi railroad select Jackson for its southeastern terminus; and provided further, that the work on said road be commenced within one year and completed within three years to Yazoo City.

SEC. 2. Be it further ordained: That this ordinance be in force and take effect from and after its adoption.

Adopted May 5th, 1892.

Plaintiff objected to the introduction of said exemption from the city of Jackson, on the ground that the city had no authority in law to grant said exemption, and moved to have the same excluded; which motion was by the court sustained, the evidence excluded, and the defendant excepted, and its exception was allowed; whereupon defendant rested.

52 This was all the evidence offered in the case; whereupon plaintiff asked the court to give the following charge, to wit:

The court instructs the jury to find for the plaintiff in such sum as they may believe from the evidence to be due and owing said several cities, towns, and villages for taxes for the years mentioned in the declaration; which instruction was given by the court and signed by the clerk and filed as a part of the record in the case.

And the defendant presented to the court and asked to have given to the jury the following charge, to wit: The court instructs the jury to find for the defendant; which instruction asked by the defendant the court refused and marked it refused, and it was signed by the clerk, filed, and made a part of the record in the case.

To the granting of said instruction to plaintiff and the refusal of said instruction asked by it the defendant then and there excepted, and its exception was allowed.

And after said cause had — submitted to the jury they returned into court their verdict, which appears in the record, upon which the judgment in the record was rendered.

And afterwards the defendant filed in said cause its motion for a new trial, which appears in the record, which came on for hearing and was considered and overruled by the court; to the action of the court in the overruling of said motion the defendant then and there instantly excepted and tendered this its bill of exceptions, which it asks may be signed by the court, filed, and made a part of the record in the case; all of which is accordingly done this the 22nd day of Aug., 1898.

ROBERT POWELL, *Judge.*

O K.
WILLIAMSON & POTTER.

Filed August 24th, 1898.

F. B. NEAL, *Clerk,*
By W. J. BROWN, *D'y Clerk.*

53 *Appeal Bond.*

THE STATE OF MISSISSIPPI, }
Hinds County. }

Know ye that we, The Yazoo & Mississippi Valley Railroad Company and John Hart and Edward Mayes, are held unto Wirt Adams, State revenue agent, in the sum of sixteen thousand dollars; for the payment of which we bind ourselves and legal representatives, jointly and severally, firmly by these presents.

Signed with our names this 24th day of August, 1898.

The condition of the obligation is that the above-named Wirt Adams, State revenue agent, on the 1st day of July, 1898, before the circuit court of district No. one for said county, obtained a judgment against the above-bound Yazoo & Miss. Valley R. R. Co. for the sum of seventy-five hundred sixty-two & $\frac{88}{100}$ dollars, with interests and costs, and the said Yazoo & Miss. R. R. Co. hath prayed an appeal to the next term of the supreme court for said State; therefore, if the said Yazoo & Miss. Valley R. R. Co. shall pay and

satisfy such judgment as the supreme court may render against it in the premises, then this obligation to bevoid; otherwise to remain in full force and effect.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD CO.,
By E. MAYES.
JOHN HART,
By BEN. HART.

Filed Aug. 24, 1898.

F. B. NEAL, *Clerk*,
By W. J. BROWN, *D'y Clerk*.

The foregoing bond and security approved this 24th day of August, 1898.

F. B. NEAL, *Clerk*,
By W. J. BROWN, *D'y C'k*.

54 *Certificate.*

STATE OF MISSISSIPPI, }
Hinds County. }

I, F. B. Neal, clerk of the circuit court in and for said county and State, hereby certify the foregoing and annexed twenty-four pages to contain a full, true, and correct transcript of the record of the cause stated in the caption as the same remains on file and of record in my office.

Given under my hand and the seal of said court this 7th day — November, 1898.

F. B. NEAL, *Clerk*,
[SEAL.] By W. J. BROWN, JR., *D. C.*

Record endorsed: Filed November 19th, 1898. E. W. Brow-, clerk, by C. C. Campbell, D. C.

55 STATE OF MISSISSIPPI, }
County of Hinds. }

In the Supreme Court, at the November Special Term, 1898, First District.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, Appellant,
v.
WIRT ADAMS, State Revenue Agent, Appellee. } 9206.

Assignment of Errors.

Comes the appellant herein, The Yazoo & Mississippi Valley Railroad Company, and for error assigns as follows:

1. The court below erred in sustaining the demurrer to the defendant's second plea.

2. The court below erred in sustaining the demurrer to the defendant's third plea.

3. The court below erred in sustaining the demurrer to the defendant's fourth plea.

4. The clerk below erred in failing to attach the demurrers of plaintiff to pleas of the defendant to the plaintiff's own declaration and amended declaration.

5. The court below erred in giving the peremptory instruction for the plaintiff.

6. The court below erred in refusing the instruction asked by the defendant.

7. The court below erred in overruling the defendant's motion for a new trial.

Respectfully submitted.

HARRIS & MAYES,
Att'ys for Appellant.

Endorsed: Filed Nov. 30, 1898. E. W. Brown, clerk, by C. C. Campbell.

56 YAZOO & MISSISSIPPI VALLEY R. R. Co., Appellant,
v.
WIRT ADAMS, State Rev. Agent, Appellee. } 9206.

In this cause it is agreed between the appellant and appellee as follows:

First. That the appellee in the court below demurred generally to the second plea of the appellant, and that the court sustained such demurrer, and an order was duly entered to that effect, which should appear in the transcript, and that this order shall be considered as in the transcript.

Second. That on the trial below the court gave a peremptory instruction for the plaintiff and refused one asked by the defendant, and such instructions should appear in the transcript, and will be treated as if they were in the same.

Third. It is agreed that the journals of the legislature for the years 1886, 1888, 1890, & 1896 may be considered as part of this record, and all entries therein showing efforts to repeal the railroad exemptions from taxation, either generally or specially, may be referred to by either party hereto without being copied into this record.

Fourth. It is further agreed that in the year 1882 the defendant below made a lease to the Illinois Central Railroad Company for a term of fifty years of all the property in the declaration mentioned, and did then deliver the same to the I. C. Company pursuant to such lease; that by said lease the said Illinois Central Company agreed & promised to pay off & discharge all taxes legally assessed & levied by said Y. & M. V. R. R. Co. or against & upon & because of such property during the continuance of such lease. It is further agreed that this cause shall be treated & decided as if such lease were incorporated in the transcript herein.

WILLIAMSON & POTTER,
Att'ys for Appellee.
MAYES & HARRIS,
Att'ys for Appellant.

Endorsed: Filed Dec. 6, 1898. E. W. Brown, clerk, by C. C. Campbell, D. C.

57 On the 14th day of December, 1898, the same being a day of the November special term of the supreme court of Mississippi, an entry was made upon the minutes of said court in said cause in words and figures as follows:

Y. & M. V. R. R. Co.
v.
WIRT ADAMS, Rev. Agt. } 9206.

Submitted on brief by Messrs. Williamson & Potter, for the appellee, with leave to the appellant to file brief within a week.

And on the 27th day of March afterwards, the same a day of the regular March term, A. D. 1899, of said court, final judgment was rendered by said court and entered upon the minutes thereof in the following words and figures, to wit:

YAZOO & MISSISSIPPI VALLEY RAILROAD CO.
v.
WIRT ADAMS, State Revenue Agent. } 9206.

This cause having been submitted at a former term of this court on the record herein from the circuit — of Hinds county, 1st district, and this court, having sufficiently examined and considered the same and being of opinion that there is no error therein, doth order and adjudge that the judgment of said circuit court rendered in this cause at the June term thereof, A. D. 1898, on the *the* 1st day of July, 1898, be, and the same is hereby, affirmed; and it is further considered and so ordered and adjudged by this court that the appellee do have and recover of the appellant and John Hart and Edward Mayes, sureties in the appeal bond, the sum of seven thousand five hundred and sixty-two and $\frac{88}{100}$ dollars, the amount of the judgment in the court below, together with the sum of three hundred and seventy-eight and $\frac{14}{100}$ dollars, being damages, at the rate of 5 *% per centum*, as allowed by law, as well as interest on the amount of the said judgment from date of rendition till paid,
58 at the rate of 6 *% per centum* per annum, and also the costs of this cause in this court and the court below expended, &c., to be taxed, &c.

Opinion of the Court.

Y. & M. V. R. R. Co.
v.
WIRT ADAMS, State Revenue Agent. } 9206.

WHITFIELD, *J.*:

The preamble of the act under which the exemption here is claimed recites as follows: "Whereas the physical difficulties of constructing and maintaining railroads to, across, along, or within either

the Mississippi, Sunflower, Deer Creek, or Yazoo bottoms, or basins, or other alluvial lands herein referred to, are such that no private company has so far been able to establish a railroad or branches developing said basins and alluvial lands, and connecting them with the railroad system of the country, therefore in order to induce the investment of capital in the construction of said road, &c.," numerous and extraordinary privileges were granted, among others an exemption from taxation as set out in § 8 of the act, upon the express conditions of "the completion of said road (that is the Yazoo and Mississippi Valley R. R.) to the Mississippi river."

And yet, without pretense of ever having "completed" the construction of the said railroad to the Mississippi river, it is gravely urged that because the Y. & M. V. R. R. Co. consolidated with the L., N. O. & T. R. R., which had bought the N. J. & C. R. R., the exemption had been earned. It ought to be obvious that a paper consolidation is not a completion by physical construction to the Mississippi river. The reasons underlying the exemption—the consideration to the State—are plain, are adverted to in the preamble, and utterly negative the claim of appellant. Adams v. R. R. Co. 75 Miss., 275; Yazoo & Mississippi Valley R. R. v. Thomas, 65 Miss. 562, affirmed 132 U. S.

The city of Jackson had no power to grant the exemption claimed.

There is no merit in any of the contentions.

Affirmed.

59 UNITED STATES OF AMERICA, *State of Mississippi*, } ss:

THE YAZOO & MISSISSIPPI VALLEY COMPANY *et al.* v. WIRT ADAMS, State Revenue Agent. } Petition for Writ of Error, etc.

To the Honl. Thomas H. Woods, chief justice of the supreme court of the State of Mississippi:

The petition of the Yazoo & Mississippi Valley Railroad Company and of John Hart and of Edward Mayes respectfully shows that on the 27th day of March, 1899, the said supreme court rendered judgment against the petitioners in a certain cause wherein your petitioner, The Yazoo & Mississippi Valley Railroad Company, was the appellant and the other petitioners its sureties on its appeal bond, and Wirt Adams, State revenue agent in and for the State of Mississippi, was appellee, for the sum of $7,562.88, with 6 per cent. interest, and also for statutory damages amounting to $378.14, and for costs, and in legal effect awarded execution thereon, as will appear by reference to the record and proceedings in said cause; that in said suit was drawn in question the validity of certain statutes of the said State of Mississippi, on the ground of their being repugnant to the Constitution of the United States and the amendments thereto, and the decisions of said supreme court was

in favor of the validity of such statutes, and that in said suit was drawn in question the validity of certain provisions of the constitution of the said State of Mississippi adopted November 1st, 1890, on the ground of their being repugnant to the Constitution of the United States and the amendments thereto, and the decision of said supreme court was in favor of the validity of such provisions, and *in that* said *writ* was drawn in question the validity of an authority exercised by the State revenue agent under the statutes and constitution of said State, on the ground that the same
is repugnant to the Constitution of the United States and the
60 amendments thereto, and the decision of the said supreme court was in favor of the validity of such authority, and that in said suit was drawn in question the validity of an authority exercised by the railroad commission of said State acting as assessors of the railroad property for taxation, under the statutes and constitution of said State, on the ground that the same is repugnant to the Constitution of the United States and the amendments thereto, and the decision of said supreme court was in favor of the validity of such authority, and that in said suit was also drawn in question the validity of an authority exercised by the said supreme court of said State by the circuit court of Hinds county, in said State, under the statutes and constitution of said State, on the ground that the same is repugnant to the Constitution of the United States and the amendments thereto, and the decision of said supreme court was in favor of the validity of such authority, and that in said suit the petitioners, who were appellants, claimed a right under the Constitution and statutes of the United States and the decisions of said supreme court was against the said right specially set up and claimed under such Constitution and statutes, and that in said suit petitioners, who were appellants, claimed a privilege and immunity under the fourteenth amendment to said Constitution and in the decision of said supreme court was against the said privilege and immunity set up and claimed specially under such Constitution and under said fourteenth amendment and under said statutes.

Wherefore your petitioners are aggrieved and they pray for a writ of error, with citation and supersedeas, returnable into the Supreme Court of the United States on the ——.

And, as in duty bound, they will ever pray, etc.

THE YAZOO & MISSISSIPPI — RAILROAD CO.,
By EDWARD MAYES, *Attorney*.

STATE OF MISSISSIPPI:

Desiring to give petitioners an opportunity to test in the Supreme
Court of the United States the questions presented in the
61 foregoing petition and in the assignment of errors by which it is accompanied, it is ordered that a writ of error be, and the same is hereby, allowed by the said court, and that the same be made a supersedeas, the bond in the penal sum of sixteen thousand dollars, also herewith presented, being approved.

In testimony whereof witness my hand this 6th day of May 1899.

THOMAS H. WOODS,
Chief Justice of the Supreme Court of the State of Mississippi.

Endorsed: Filed May 12, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

62 STATE OF MISSISSIPPI:

In the Supreme Court, March Term, 1899.

YAZOO & MISSISSIPPI VALLEY RAILROAD CO. ET ALS., Appellants,
—.
WIRT ADAMS, State Revenue Agent, Appellee.

I, Thomas H. Woods, chief justice of the supreme court of the State of Mississippi, at the present time and upon the argument and the hearing of the above-entitled appeal, do hereby certify:

I. That upon said argument and hearing the validity of legislation of the State of Mississippi subsequent to the statute of Feb'y 17th, 1882, was drawn in question by the said Yazoo & Mississippi Valley Railroad Company and the said John Hart and Edward Mayes, on the ground of such legislation being repugnant to section 10, article 1, of the Constitution of the United States, in such that legislation impaired the obligation of a contract between the State of Mississippi and the Yazoo & Mississippi Valley Railroad Company, as embodied in the charter of the said company, and that the decision of the said supreme court of Mississippi was in favor of the validity of such legislation.

II. That upon the said argument and hearing the said Yazoo & Mississippi Valley Railroad Company set up a claim and contract right as conferred by the eighth section of the charter of the said railroad company to exemption *to* taxation by municipalities, and set up a claim that such contract right was protected against impairment by the Constitution of the United States, and the decision of the supreme court of the State was adverse to such claim of contract right and held that the right claimed did not exist. Wherefore that it was not impaired by the subsequent legislation under and by virtue of which the State revenue agent sought to collect the taxes demanded in the suit at bar.

III. That on such argument and hearing the said Yazoo & Mississippi Valley Railroad Company set up and claimed specially under section 8 of the charter of said company a contract right to exemption *to* taxation by the State, counties, or municipalities, on
63 the ground that the said right had been earned under the terms of said contract by reaching the Mississippi river, and the decision of the said supreme court was adverse to said claim of right, holding that the said exemption conferred by said section 8 had not been earned by so reaching said river, and that the contract of said charter was not impaired by the subsequent legislation under

which the State revenue agent prosecuted the suit at bar for the taxes demanded.

IV. That upon the said argument and hearing the said Yazoo & Mississippi Valley Railroad Company set up and claimed an exemption from taxation by the city of Jackson under a special contract made with such city, and the decision of the said supreme court was adverse to such claim, holding that no such contract existed, and that the subsequent legislation under and by virtue of which the State revenue agent was prosecuting his demand in the suit at bar as to taxes due said city of Jackson did not impair the obligation of any contract with said city.

In witness whereof I have hereunto subscribed my name this the 6th day of May, in the year one thousand eight hundred and ninety-nine.

THOMAS H. WOODS,
Chief Justice Supreme Court.

Endorsed: Filed May 12, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

64 The Supreme Court of the United States.

Know all men by these presents that we, The Yazoo & Mississippi Valley Railroad Company and John Hart and Edward Mayes, as principals, of the State of Mississippi, and Samuel S. Carter and J. B. Harris, as sureties, of Jackson, Mississippi, are held and firmly bound unto Wirt Adams, State revenue agent, of Jackson, Mississippi, in the sum of sixteen thousand dollars, to be paid to said Wirt Adams, State revenue agent, or his successors in office; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Dated this the 6th day of May, 1899.

Whereas the above-named The Yazoo & Mississippi Valley Railroad Company and John Hart and Edward Mayes have prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment rendered in the above-described cause by the supreme court of the State of Mississippi on the 27th day of March, 1899, in favor of the said Wirt Adams, State revenue agent, against the said plaintiffs in error:

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs in error shall prosecute their said writ of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE YAZOO & MISSISSIPPI VALLEY
RAILROAD COMPANY,
By EDWARD MAYES, *Att'y.*
JOHN HART.
EDWARD MAYES.
SAM'L S. CARTER.
J. B. HARRIS.

Endorsed: Filed May 12, 18—. E. W. Brown, clerk, by C. C. Campbell, D. C.

65 Supreme Court of Mississippi.

I, E. W. Brown, clerk of the supreme court of Mississippi, by virtue of the annexed writ of error and in obedience thereto, do hereby certify that the foregoing 64 pages contain a true and complete transcript of the record and proceedings had in said court in the cause of No. 9206, Yazoo & Mississippi Valley Railroad Co., plaintiff in error, *v.* Wirt Adams, State revenue agent, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of said court to be hereunto affixed, at the city of Jackson, in the State of Mississippi, this the 27th day of May, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

[Seal Supreme Court, State of Mississippi.]

E. W. BROWN, *Clerk.*

66 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Mississippi, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between Wirt Adams, State revenue agent, as plaintiff, and The Yazoo & Mississippi Valley Railroad Company, as defendant, and wherein judgment was rendered in favor of said plaintiff in said court on the 27th day of March, 1899 A. D., against said defendant and against John Hart and Edward Mayes, sureties, and in which suit was drawn in question the validity of certain statutes of the State of Mississippi, on the ground of their being repugnant to the Constitution of the United States and the amendments thereto, and the decision of said supreme court was in favor of the validity thereof, and in which suit was also drawn in question the validity of certain provisions of the constitution of the State of Mississippi adopted November 1, 1890, on the ground of their being repugnant to the Constitution of the United States and the amendments thereto, and the decision of said supreme court was in favor of the validity thereof, and in which suit was also drawn in question the validity of an authority exercised by the said State revenue agent under the statutes and constitution of said State, on the ground that the same is repugnant to the Constitution of the United States and the amendments thereto, and the decision of said supreme court was in favor of the validity of such authority, and in which suit was also drawn in question the validity of an authority exercised by the railroad commission of said State acting as assessors of railroad prop-

erty for taxation under the statutes and Constitution of said State, on the ground that the same is repugnant to the Constitution of the United States and the amendments thereto, and the decis-
67 ion of said supreme court was in favor of such authority, and in which suit was also drawn in question the validity of an authority exercised by said supreme court and by the circuit court of Hinds county, in said State, under the statutes and constitution of said State, on the ground that the same is repugnant to the Constitution of the United States and the amendments thereto, and the decision of said supreme court was in favor of the validity of such authority, and in which suit the Yazoo & Mississippi Valley Railroad Company claimed a right under the Constitution and statutes of the United States and the decision of said supreme court was against such right specially set up and claimed under such Constitution and statutes, and in which suit the said Yazoo & Mississippi Valley Railroad Company claimed a privilege and immunity under the Constitution and statutes of the United States and under the fourteenth amendment to such Constitution and the decision of the said supreme court was against the said privilege and immunity so set up and specially claimed under such Constitution and under said fourteenth amendment and under said statutes, a manifest error hath happened, to the great damage of said Yazoo & Mississippi Valley Railroad Company and of said John Hart and of said Edward Mayes, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same in Washington on the 10th day of June next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of
68 right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 11th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Witness also my signature and the seal of the circuit court of the United States in and for the southern district of Mississippi this the day aad year aforesaid.

[Seal U. S. Circuit Court, 5th Circuit, Southern District of Mississippi.]

L. B. MOSELEY, *Clerk.*

Supreme Court of Mississippi.

I, E. W. Brown, clerk of the supreme court of Mississippi, by virtue of the within writ of error and in obedience thereto, do hereby send herewith the record and proceedings in said cause, duly certi-

fied and authenticated according to law, to the honorable Supreme Court of the United States.

In testimony whereof I have caused the seal of said court to be hereunto affixed, in the city of Jackson, in the State of Mississippi, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third.

[Seal Supreme Court, State of Mississippi.]

E. W. BROWN, *Clerk.*

[Endorsed:] 9206. Yazoo & Miss. Valley Railroad Co. *et als.*, pl'ffs in error, *v.* Wirt Adams, State revenue agent, def't in error. Writ of error. Filed May 12, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C. Copied. Copied. Copy.

69 UNITED STATES OF AMERICA:

To Wirt Adams, State revenue agent, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the supreme court of the State of Mississippi, wherein The Yazoo & Mississippi Valley Railroad Company and John Hart and Edward Mayes are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas H. Woods, chief justice of the supreme court of the State of Mississippi, this the 11th day of May, A. D. 1899.

THOMAS H. WOODS,
Chief Justice of the Supreme Court of Mississippi.

Received this writ on the 11th day of May, 1899, at Jackson, Miss., and executed the same day upon the within-named Wirt Adams by handing to him personally a true copy hereof at Jackson, Mississippi.

F. W. COLLINS,
U. S. Marshal,
By R. O. EDWARDS, *Deputy.*

[Endorsed:] Filed May 25, 1899. E. W. Brown, clerk.

70 Supreme Court of the United States, October Term, 1898.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD CO. ET ALS., Plaintiffs in Error,
v.
WIRT ADAMS, State Revenue Agent, Defendant in Error.

Afterwards, to wit, on the 6th day of May, 1899, before the justices of the Supreme Court of the United States, at the Capitol, in the

city of Washington, come the said Yazoo & Mississippi Valley Railroad Company and the said John Hart and the said Edward Mayes, plaintiffs in error, by their and each of their attorney, Edward Mayes, and say that in the record and proceedings aforesaid there is manifest error in the particulars following, to wit:

1. The said supreme court of the State of Mississippi erred in rendering the judgment of March 27th, 1899, whereby the tax provisions of the Annotated Code of 1892 and chapter 26 of the said Annotated Code of 1892, providing for the office of revenue agent of the State of Mississippi, and chapter 34 of the Session Laws of the Year 1894, making further provision for the said office of State revenue agent and defining the powers of that office, were given effect against the contract rights of the plaintiffs in error, The Yazoo & Mississippi Valley Railroad Company, embodied in the act of February 17th, 1882, which constitutes the charter of the Yazoo and Mississippi Valley Railroad Company, whereby the obligation of the contract rights therein in respect to its exemption from taxation was impaired, contrary to section 10, article 1, of the Constitution of the United States.

2. The said supreme court erred in its decision and judg-
71 ment of December 20th, 1897, at the December term, 1897, of said supreme court in reversing the decision and judgment of the trial court whereby said trial court had sustained the demurrer of the defendant to the declaration of the plaintiff below and had dismissed the action of said plaintiff.

3. The said supreme court erred in its judgment and decision of the 27th of March, 1899, in affirming the judgment of the trial court rendered at the July term, 1898, and especially in holding that the second plea of the defendant below was not sufficient in law, and that said defendant below had not earned its exemption under its contract by reaching the Mississippi river, and in holding the fourth plea to be insufficient in law.

4. The said supreme court erred in its decision and judgment of March 27th, 1899, in affirming the decision and judgment of the trial court rendered at the July term, 1898, and especially in their holding that the third plea of the defendant below was insufficient in law, and that there was no valid and binding contract in respect to its exemption between the said defendant below and the said city of Jackson.

And the said Yazoo & Mississippi Valley Railroad Company and the said John Hart and the said Edward Mayes pray that the judgment aforesaid may be reversed, annulled, and altogether held for nought, and that they may be restored to all things which they have lost by occasion of said judgment.

THE YAZOO & MISSISSIPPI VALLEY
RAILROAD COMPANY,
By E. MAYES, *Att'y.*
JOHN HART,
By E. MAYES, *Att'y.*
EDWARD MAYES.

[Endorsed:] 9206. Yazoo & Miss. Valley Railroad Co. *et als.*, pl'ffs in error, *v.* Wirt Adams, State revenue agent, def't in error. Assignment of errors. Filed May 12, 1899. E. W. Brown, clerk, by C. C. Campbell, D. C.

72 To fees for this record..... ... . $40.70

Paid by Y. & M. V. R. R. Co., per Mayes & Harris, att'ys.

E. W. BROWN, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Endorsed on cover: File No., 17,438. Mississippi supreme court. Term No., 324. The Yazoo and Mississippi Valley Railroad Company *et al.*, plaintiffs in error, *vs.* Wirt Adams, State revenue agent. Filed June 6th, 1899.

Office Supreme Court U. S.
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Clerk

No. 324. 80

Brief of Guthrie, Fentress & Mayes for P. E. (mo.)

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Oct. 9, 1899.

No. 324.

ON MOTION TO DISMISS OR AFFIRM.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,
vs.
WIRT ADAMS, State Revenue Agent.
In error to the Supreme Court of Mississippi.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR IN OPPOSITION TO THE MOTION TO DISMISS OR AFFIRM.

WILLIAM D. GUTHRIE,
JAMES FENTRESS,
EDWARD MAYES,
NOEL GALE,
Of counsel for plaintiffs in error.

WASHINGTON, October 9, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 324.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,
vs.
WIRT ADAMS, State Revenue Agent.

In error to the Supreme Court of Mississippi.

BRIEF OF ARGUMENT FOR PLAINTIFFS IN ERROR IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

This suit involves the construction of a part of the same legislative charter that was before the court in *Yazoo Railroad Co. v. Thomas*, 132 U. S. 174, 184. Indeed, the motion states "that this action was brought on the authority of" that case. The charter is that of the Yazoo and Mississippi Valley Railroad Company, one of the plaintiffs in error here,[1] approved February 17, 1882, and the provisions in question are contained in the last clause of section 8 of that act. The section is as follows:

> "That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State, necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the com-

[1] Laws Mississippi, 1882, pp. 838, 847.

pletion of said railroad to the Mississippi river, but not to extend beyond 25 years from the date of the approval of this act; and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by the Treasurer of this State and paid into the State Treasury, to be dealt with as the Legislature may direct; *but said company shall be exempt from taxation by cities and towns.*"

The court had before it in the *Thomas* case, the exemption claimed in respect of state and county taxes. It was held that the railroad company was not entitled to the exemption because it had not yet completed its railroad to the Mississippi River. The controversy here has to do with the exemption from "taxation by cities and towns" found in the concluding portion of the section, which exemption the court below, in construing the charter, has held to be likewise conditional.

In the *Thomas* case, a motion to dismiss was made upon the same ground as that urged in the case at bar. The motion was overruled, Mr. Chief Justice Fuller saying:

"The taxes in question were assessed under the act of 1888, and if the charter of the company, which became a law on the 17th of February, 1882, inhibited such taxation, then this court has jurisdiction to re-examine the conclusion reached. Although by the terms of the act of 1888 the taxes therein referred to were not to be levied as against a railroad exempt by law or charter, yet the Supreme Court held that this company is not exempt, and is embraced within the act; so that if a contract of exemption is contained in the company's charter, then the obligation of that contract is impaired by the act of 1888, which must be considered, under the ruling of the Supreme Court, as intended to apply to the company. The result is the same, although the act of 1888 be regarded as simply putting in force revenue laws existing at the date of the company's charter, rather than itself imposing taxes, for if the contract existed those laws became inoperative, and would be reinstated by the act of 1888. The motion to dismiss the writ of error is therefore overruled."

In the present case, the Chief Justice of Mississippi, although concurring in the judgment under review, has certified in the clearest language that a Federal question was involved below.[1]

Upon the merits, the plaintiffs in error expect to be able to show that the charter contract confers an unconditional exemption "from taxation by cities and towns," as its language purports to do, and that the legislature intended to draw a distinction between taxation for state purposes and "taxation by cities and towns," the former being made conditional on completion of the railroad to the Mississippi, as decided by this court in the *Thomas* case, the latter being made absolute and unconditional.

The people and the legislature of Mississippi have repeatedly treated the two powers of taxation as differing in their nature, and have prescribed regulations as to municipal taxation differing widely from the regulations as to county and state taxation. Constitution of 1890, Sections 181, 182, 192; Section 2956 of the Annotated Code of 1892; Revenue Law of 1890, Laws of 1890, pp. 9, 11; Revenue Law of 1894, Laws of 1894, p. 25.[2]

Many acts are cited in the appendix which show the broad distinction constantly drawn in Mississippi between

[1] STATE OF MISSISSIPPI, In the Supreme Court. } March Term, 1899.

YAZOO AND MISSISSIPPI VALLEY RAILROAD CO., ET AL. Appellants,

WIRT ADAMS, State Revenue Agent, Appellee.

I, Thomas H. Woods, Chief Justice of the Supreme Court of the State of Mississippi, at the present time and upon the argument and the hearing of the above entitled appeal, do hereby certify:

1. That, upon said argument and hearing the validity of legislation of the State of Mississippi, subsequent to the statute of February 17, 1882, was drawn in question by the said Yazoo and Mississippi Valley Railroad Company, and said John Hart and Edward Mayes, on the ground of such legislation being repugnant to section 10; article I. of the Constitution of the United States, *in such that* legislation impaired the obligation of a contract between the State

[2] Appendix, pp. I., III., IV.

DARK PAGE BLEED THRU

the imposition and collection of state and county taxes upon the one hand and municipal taxes upon the other hand. Thus, it will be seen, railroad companies might pay a privilege tax in lieu of the ordinary *ad valorem* taxes, excepting as to municipal taxes; and street railroads and machine shops might be exempted from municipal taxation.

Perhaps the strongest evidence of the intention in the legislation of 1882 is to be found in the difference in phraseology between the charter under consideration and other charters granted at the same session. The charters of the Yazoo and Mississippi Valley and the Canton, Aberdeen and Nashville Railway Companies, passed upon the same day, contain identical provisions as to taxation and exemption; and this language was used by the legislature in several other charters granted at that session (see Appendix). But when the same legislature decided to limit the exemption from municipal taxation in point of time, it inserted in certain other charters provisions expressly restricting such exemption. In one case, the proviso was as follows: "*Provided*, the exemption in towns and cities shall not be more

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of Mississippi and the Yazoo and Mississippi Valley Railroad Company as embodied in the charter of the said Company, and that the decision of the said Supreme Court of Mississippi was in favor of the validity of such legislation.

2. That upon the said argument and hearing, the said Yazoo and Mississippi Valley Railroad Company set up a claim and contract right as conferred by the eighth section of the charter of the said Railroad Company to exemption to taxation by municipalities, and set up a claim that such contract right was protected against impairment by the Constitution of the United States, and the decision of the Supreme Court of the State was adverse to such claim of contract right and held that the right claimed did not exist. Wherefore, that it was not impaired by the subsequent legislation under and by virtue of which the State Revenue Agent sought to collect the taxes demanded in the suit at bar.

* * * * * * *

In witness whereof, I have hereunto subscribed my name, this 6th day of May in the year one thousand and eight hundred and ninety-nine.

THOMAS H. WOODS,
Chief Justice Supreme Court.

than twenty years."[1] In another act, the proviso was: "*Provided*, that this act shall not prevent the city of Meridian from levying municipal taxes on said railroad and its property, after the exemption period of twenty years shall have expired."[2] In still a third charter, the exemption from municipal taxation was thus limited: "*Provided*, the municipal authorities of the city of Meridian may impose such taxes on said railroad company and its property of every description as may be imposed on other railroads and property of like character after the said period of exemption of twenty years have expired."[3]

It thus appears that not only did the constitution sanction a distinction between these forms of taxation, and the legislature repeatedly make use of such a distinction, but also that the very legislature which passed the charter now under consideration, whenever it desired to limit the exemption from municipal taxation, did so in unmistakable terms. For many years, the practical construction was that the municipal taxation was unconditional; and the present position of court and officials is a departure and change of front. Surely, without elaborating further, it must be reasonably apparent that, on the merits, there is a serious question for the consideration of this court.

The present motion to dismiss is based upon three grounds: That the record does not show that a Federal question was so directly involved that the state court could not have given judgment without deciding it; that no Federal question was involved; and that the "pretended" Federal question was not duly raised in point of time. These grounds will be discussed in the order in which they are stated in the moving papers.

[1] Laws Mississippi, 1882, c. 551, sec. 27, p. 975.
[2] Laws Mississippi, 1882, c. 549, sec. 22, p. 959.
[3] Laws Mississippi, 1882, c. 568, sec. 22, p. 1065.

I.

The Federal question in the record.

The suit, so far as it relates to taxes levied since 1892, was based upon the provisions of Chapter 93 of the Annotated Code of 1892 entitled "Municipalities," which confers the taxing power upon cities, towns and villages in Mississippi and regulates its exercise. The provisions referred to are printed in an appendix to this brief. The suit was, therefore, as to those taxes, clearly an attempt to enforce a statute of the State, subsequent to the charter of 1882, within the direct ruling in *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, 184. As to the taxes prior to 1892, namely, 1886 to 1891, the right to levy them was conferred in the case of at least four towns by statutes enacted subsequent to 1882, as shown in the appendix; and the same rule must apply to them. Therefore, at most, the taxes of only six municipalities were levied under legislation enacted prior to 1882.

Upon the merits, there was absolutely no controversy below except as to the construction of the charter and the contract rights of the company.

The third and fourth pleas interposed by the principal plaintiff in error in the trial court specifically referred to its charter (special record, pp. 27, 28) and set up the Federal question by alleging that, under the charter, its property was exempt from municipal taxation; that the power to make such exemption had been judicially recognized and declared; and that such exemption was a "part of the charter contract of the defendant as between it and said State," etc., etc. (*id.*, p. 28). These pleas were demurred to, and the demurrers were sustained (*id.*, pp. 28, 29, 30). The Federal question arising under the contract clause of the Federal Constitution thus appeared upon the face of

the pleadings and was expressly passed upon, and the decision against the right claimed was affirmed by the judgment, to reverse which this writ of error was sued out. From beginning to end, the defense was under the contract clause.

The contention of the defendant in error upon this branch of the motion seems to be that the Federal right or constitutional point must be expressly "pleaded" in so many words. In support of this ground, reliance is placed upon cases belonging to the third class mentioned in section 709 of the Revised Statutes, in which the final decree of a state court may be re-examined in this court. The jurisdiction in the case now before the court is, however, under the second class. It is, of course, well established that in cases which belong to the second class—that is to say, where "is drawn in question the validity of a statute of, or an authority exercised under a statute of, any State on the ground of its being repugnant to the Constitution," etc.—it is not necessary that the Federal question should be specially set up or claimed in order to give this court jurisdiction, but it is sufficient that it appear that the Federal question was involved in the case, and that the case could not have been determined without deciding it. This well-established rule of practice was most emphatically reiterated at the last term in *Water Power Co.* v. *Street Railway Co.*, 172 U. S. 475, 485, in which case Mr. Justice Brown, in referring to a state of facts quite analogous to those now presented, used the following language:

> "While no special mention is made in the complaint of the Constitution of the United States, the whole theory of the plaintiff's case taken in connection with the answer is that the rights which it acquired to the five hundred horse power in question under the act of 1887 were impaired by the subsequent

act of December 24, 1892, ratifying and approving the contract of the board of directors of the state penitentiary with the defendant. The contract of the defendant is set up in the complaint, and although the act of December, 1892, ratifying the same is not set up there, it appears in the answer and is relied upon as validating the contract; so that, reading the complaint and answer together, the question whether the contract of the plaintiff was impaired by subsequent State action appears on the face of the pleadings. * *

"While, in so holding, the court disposed of the case upon the construction of the contract under which the plaintiff asserted its right, such construction is no less a Federal question than would be the case if the construction of the contract were undisputed, and the point decided upon the ground that the subsequent act confirming the contract with the defendant did not impair it. The question in either case is whether the contract has been impaired, and that question may be answered either by holding that there is no contract at all, or that the plaintiff had no exclusive rights under its contract, or granting that it had such exclusive rights, that the subsequent legislation did not impair it. These are rather differences in the form of expression than in the character of the question involved, and this court has so frequently decided, notably in the very recent case of *McCullough* v. *Virginia*, 172 U. S. 102, that it is the duty of this court to determine for itself the proper construction of the contract upon which the plaintiff relies, that it must be considered no longer as an open question, *N. O. Water Works* v. *La. Sugar Co.*, 125 U. S. 18; *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116.

"TO THE ARGUMENT THAT THE FEDERAL RIGHT WAS NOT 'SPECIALLY SET UP AND CLAIMED' IN THE LANGUAGE OF REVISED STATUTES, SECTION 709, IT IS REPLIED THAT THIS IS NOT ONE OF THE CASES IN WHICH IT IS NECESSARY TO DO SO."

II.

THE FEDERAL QUESTION WAS NECESSARILY INVOLVED.

The theory of the defendant in error evidently is that the existence of the contract is a question upon which this court, whatever its own opinion may be, must take the view of the court below, because the construction of the constitution and statutes of Mississippi is in some measure involved. It is urged by him that the case comes

within the general rule that this court adopts the construction of state laws by state courts; but the one exception to this rule—namely, when the contract clause of the Federal Constitution is involved—has been overlooked by counsel, although so frequently declared by this court and recently reiterated in *Douglas* v. *Kentucky*, 168 U. S. 488, 500; *Chicago &c. Railroad* v. *Nebraska*, 170 U. S. 57, 68; *McCullough* v. *Virginia*, 172 U. S. 102, 109; and *Water Power Co.* v. *Street Railway Co.*, 172 U. S. 475, 484.

In all cases arising under the contract clause of the Federal Constitution, it is the prerogative and duty of this court to inquire and judge for itself (1) whether a contract has or has not been made and is still in existence; and (2) whether the obligation of that contract has been impaired. In cases involving rights which do not arise under the contract clause of the Federal Constitution, this court may follow the decisions of the state courts as to the construction of local constitutions and laws; but, whenever the Federal question arises under the contract clause, the construction of the local constitutions and laws is a matter which must be determined by this court according to its own views.

If this doctrine be applied, there will be no difficulty in perceiving that the decision below clearly presented a Federal question under the contract clause. The state court could not have held the plaintiffs in error liable for the taxes in suit without deciding either (1) that the provisions of section 8 did not constitute a contract of exemption, or (2) that the subsequent tax legislation of the State did not impair the obligation of that contract. *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116, 141; *Furman* v. *Nichol*, 8 Wall. 44, 55; *Murray* v.

Charleston, 96 U. S. 432, 441; *Smith* v. *Greenhow*, 109 U. S. 669, 670; *Great Western Telegraph Co.* v. *Purdy*, 162 U. S. 329, 334; *Chicago, Burlington, &c., R'd* v. *Chicago*, 166 U. S. 226, 231; *Missouri, Kansas & Texas Railway* v. *Haber*, 169 U. S., 613, 621.

As Chief Justice Waite said in *Chapman* v. *Goodnow*, 123 U. S. 540, 548:

> "We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a Federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of § 709 of the Revised Statutes, as if it had been specifically referred to and the right directly refused."

The defendant in error contends that the decision of the court below as to the true construction of that portion of section 8 relating to the exemption from municipal taxes simply involved a construction of a state statute unimpaired by any subsequent legislation (defendant's brief, p. 7). In other words, the position is that the decision of a state court, as to whether a contract was ever made, is conclusive upon this court. This is not the rule. The question as to the existence of a contract as well as its true construction has been in all cases determined by this court independently of the decisions of the state court, and in some cases in direct opposition to the rulings of those tribunals. *Louisville & Nashville R. R. Co.* v. *Palmes*, 109 U. S. 244, 256; *Vicksburg, &c., Railroad Co.* v. *Dennis*, 116 U. S. 665, 667; *Given* v. *Wright*, 117 U. S. 648, 655; *Mobile & Ohio Railroad* v. *Tennessee*, 153 U. S. 486, 492; *McCullough* v. *Virginia*, 172 U. S. 102, 109; *Water Power Co.* v. *Street Railway Co.*, 172 U. S. 475, 487. In a number of the foregoing cases

motions were made to dismiss upon the ground that the construction by the state court of its own constitution and laws was binding upon this court, but in every instance the motion to dismiss was denied. In no class of cases has this court oftener exercised its power to determine for itself the existence of an alleged contract than in the long line of decisions involving so-called exemptions or immunities from taxation.[1]

In the case at bar, the court below determined that there was no contract by which the plaintiff in error was exempted from municipal taxation, although the pleadings expressly alleged the existence of such a contract. This court is now asked to exercise its undoubted jurisdiction to review this determination for itself, and, if it finds that there was such a contract, then to determine whether the subsequent legislation of Mississippi has impaired its obligation. To deny the power and duty to so determine the existence of the alleged contract of exemption would render ineffectual a great measure of the jurisdiction which it was deemed necessary to confer upon this tribunal.

III.

THE FEDERAL QUESTION WAS DULY RAISED IN POINT OF TIME.

The declaration originally filed in this suit in the circuit court sought a recovery for the taxes for the years 1893, 1894, 1895 and 1896 only. These taxes were levied under the act of 1892. To this declaration a demurrer was interposed, on the ground that the declaration was not sufficient in law. With the issue thus framed, it was, of course, competent for the railroad company to urge not only that its charter constituted a contract ex-

[1] The following cases involved the creation or interpretation of the alleged contract: *East Hartford* v. *Hartford Bridge Co.*, 10 How. 511, 532; *Chesapeake, etc., R. R. Co.* v. *Virginia*, 94 U. S. 718, 722; *Railroad Companies* v. *Gaines*,

empting it from municipal taxation, but also that this contract was impaired by the subsequent legislation of 1892, upon which the declaration was based.[1] The decision and judgment of the trial court were in favor of the railroad company upon this issue. Inasmuch as the appeal to the Supreme Court of Mississippi was taken by the State Revenue Agent, it was unnecessary and impossible for the railroad company, by assignment of error or in any other form, to raise any Federal question; and, as the decision of the supreme court negatived the existence of the contract, that court, of course, did not consider any question of its impairment, for according to its view there was no contract right to impair.

When the case was returned to the circuit court for a new trial, an amended declaration was filed, in which were included the taxes for the years 1886, 1887, 1888, 1889, 1890, 1891 and 1892, as well as those for 1897, so that the amended declaration included all taxes from 1886 to 1897 (special record, p. 16). The railroad company promptly and in detail set up the contract contained in section 8 of its charter, under which the exemption was claimed. It followed of necessity that, if such contract existed and the subsequent legislation impaired it, the railroad company was entitled to judgment.

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97 U.S. 697, 707; *Railroad Co.* v. *Commissioners*, 103 U.S. 1, 3; *Memphis Gas Co.* v. *Shelby County*, 109 U. S. 398; *Vicksburg, &c., Railroad Co.* v. *Dennis*, 116 U. S. 665, 667; *Chicago, &c., Railroad* v. *Guffey*, 120 U. S. 569; S. C., 122 U. S. 561; *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, 184; *McGahey* v. *Virginia*, 135 U. S. 662, 667; *Wilmington & Weldon Railroad* v. *Alsbrook*, 146 U. S. 279, 293; *Bryan* v. *Board of Education*, 151 U. S. 639, 650; *Bank of Commerce* v. *Tennessee*, 161 U. S. 134, 139; *Phœnix Insurance Co.* v. *Tennessee*, 161 U. S. 174, 175; *Douglas* v. *Kentucky*, 168 U. S. 488, 495; *Chicago &c., Railroad* v. *Nebraska*, 170 U. S. 57, 68; *McCullough* v. *Virginia*, 172 U. S. 102, 109.

[1] The similar Federal question in *Yazoo Railroad Co.* v. *Thomas*, 132 U.S. 174, 182, was raised by the demurrer of the taxing officers to the bill of complaint of the railroad company. See *Smith* v. *Greenhow*, 109 U. S. 669, 670.

A demurrer to this plea was sustained, and judgment after the trial of the general issue went against the railroad company. Upon its subsequent appeal to the supreme court of the state, the error in so sustaining the demurrer to the fourth plea which relied on the contract was specifically assigned (*id.*, p. 34). That court again held that there was no unconditional contract of exemption, and it was thus again unnecessary for it to consider the claim that there was an impairment of a contract which in the opinion of the court did not exist. It was impossible to reach a conclusion adverse to the railroad company without overruling or disregarding its contention that there was a contract, and that a subsequent statute impaired the obligation of that contract. The questions of the existence of the contract of exemption and of its impairment are, therefore, necessarily in the record, and are brought here for determination.

Even were this not a case of the second class under section 709 and were it a case within the third class under that section—that is, involving a right, title, privilege or immunity under the Constitution—the court would nevertheless hold that the Federal question had been duly raised, and that the right, title, privilege or immunity had been specially set up or claimed in a proper way and in ample time. *Chicago Life Ins. Co.* v. *Needles*, 113 U. S. 574, 579; *Spencer* v. *Merchant*, 125 U. S. 345, 352; *Kaukauna Co.* v. *Green Bay &c. Canal*, 142 U. S. 254, 269; *Roby* v. *Colehour*, 146 U. S. 153, 159; *Powell* v. *Brunswick County*, 150 U. S. 433, 439; *Chicago, Burlington &c. R'd* v. *Chicago*, 166 U. S. 226, 231; *Green Bay &c. Canal Co.* v. *Patten Paper Co.*, 172 U. S. 58, 66; *Meyer* v. *Richmond*, 172 U. S., 82, 92. The result of the first appeal in this case was not a final judgment or even

a mandate directing proceedings such as an accounting. The language was: "Judgment reversed, demurrer overruled, and cause remanded" (special record, p. 14). Either party on such new trial could make any point and advance any argument within the pleadings. The question is whether this court will consider that the Federal question has been duly set up or claimed, when, as in this case, upon a *new trial on the issues and merits*, the party specially sets up and claims the right and it is overruled and denied by the trial court as presenting no defense, which ruling is subsequently affirmed by the highest state court on the same ground. Of course, no particular form of words need be used in order to raise the Federal question, nor is it necessary that it shall be raised in the original pleading or in any pleadings or at any particular time (*Dewey* v. *Des Moines*, 173 U. S. 193, 199). All that is necessary is that before final judgment below there shall be "something in the case before the state court which at least would call its attention to the Federal question as one that was relied on by the party." It affirmatively appears by the record before this court, in addition to the certificate of the Chief Justice of Mississippi, that the Federal question was specially set up and raised in the court of original jurisdiction on the new trial, and that it was likewise before the supreme court of the state when it rendered the judgment now before this court.

The court is so familiar with the questions involved that some apology may be proper for the reference to the foregoing authorities. To distinguish the cases cited on behalf of this motion would unwarrantably increase the length of this brief. None of those cases applies to the facts appearing on this record.

The motion should be denied and the case reserved for argument and decision upon the merits.

Washington, October 9, 1899.

WILLIAM D. GUTHRIE,
JAMES FENTRESS,
EDWARD MAYES,
NOEL GALE,
Of counsel for plaintiffs in error.

APPENDIX.

I.

General Municipal Tax Legislation of Mississippi.

Annotated Code of 1892.

2925. *Powers of Mayor and Board of Aldermen.*—The mayor and board of aldermen of every city, town and village shall * * have power

2926. First. *Taxes for general revenue and improvements.*—To levy and collect taxes upon all the real, mixed, and personal property within the corporate limits taxable according to the laws of the state, the valuation of such property to be taken from the assessment-rolls of the county; For general revenue purposes, not to exceed six mills on the dollar in any one year; for general improvements, excepting improvements for which special assessments are levied, not to exceed six mills on the dollar in any one year. But a village with less than three hundred inhabitants shall never pay its officers any salary or compensation, nor levy a tax on real or personal property to exceed, for all purposes, four mills on the dollar for any one year. In cities of over five thousand inhabitants a tax, not exceeding twenty mills on the dollar, may be levied for general revenue and improvements and special school-systems each; but this shall not authorize the levy of a tax in excess of the limit on the power of taxation by such city now fixed by law, unless the same be authorized by a majority vote of the qualified electors.

2927. Second. *Taxes to pay bonds and coupons.*—To levy and collect annually taxes on all the taxable property within the municipal limits, in addition to other taxes, in a sufficient amount, for the purpose of paying the interest-coupons as they become due, on all bonds of the municipality now issued or hereafter to be issued, and the bonds themselves, which tax shall be payable only in cash or in matured coupons or bonds.

3035. *Application of the chapter.*—From and after the date that this chapter becomes operative, every municipality in the state shall exercise the powers conferred herein on the class to which it belongs, and shall be governed by the provisions thereof. But an existing municipality, by resolution of its corporate authorities, entered of record and certified to the secretary of state within twelve months after this chapter becomes operative, may elect not to come under the provisions hereof.[1] * *

[1] As matter of fact, no municipalities have elected not to come under the provisions of the code.

MUNICIPAL CHARTERS SUBSEQUENT TO YAZOO AND MISSISSIPPI VALLEY CHARTER WHICH IMPOSED TAXES.

Charter of town of Tchula, approved March 8, 1882, Laws Mississippi 1882, c. 292, sec. 6, p. 328:

"That the mayor and aldermen * * * may levy taxes on all the property of the town, real and personal, that may be subject to taxation under the general revenue laws of this State, not exceeding fifty per cent. of the amount of the State tax, to be expended for municipal purposes." * * *

Charter of Yazoo City, approved March 15, 1884, Laws 1884, c. 405, sec. 14, pp. 570, 575:

"Said council shall have power by ordinance: * * *

"TWENTY-NINTH. To levy and collect taxes on all property and privileges as hereinafter provided."

Sec. 15, p. 576. "Said council shall have power by ordinance to levy and collect annually for corporation purposes,

"ONE—A tax not exceeding one per centum *ad valorem*, on all property, real, personal and mixed, situated or belonging in said city." * * *

Sec. 16, p. 579, provides specifically for the assessment and collection of taxes.

Act incorporating town of Lexington, amended by Laws 1884, c. 473, sec. 1, p. 746:

"All the provisions of the Revised Code of 1880 of this State with reference to the assessment, levy and collection of State and county taxes, be and the same are hereby declared to be the law for the assessment, levy and collection of the taxes of the town of Lexington, * * * *provided*, the town council may by ordinance change and alter the time for the assessment, levy and collection of taxes, and provided further, that the rate of taxation for town purposes shall not exceed the rate of one-half of one per cent."

Act incorporating town of Flora, approved January 29, 1886, c. 298, sec. 10, p. 501:

"The board of mayor and aldermen shall have power from time to time to make provisions for assessing tax valuations of taxable property in said town, that the taxes so assessed if not paid shall be collected in the same manner in which State and county taxes are collected, * * * *provided*, that in no case shall the tax levied by said board of mayor and aldermen exceed one-fourth of one per cent. upon the property subject to taxation."

CONTEMPORANEOUS LEGISLATION OF 1882.

The language of the concluding sentence of section 8 of the charter of the Yazoo and Mississippi Valley Railroad Company is

found in the following charters granted at that session of the legislature:

Alabama and Mississippi Railroad Company, Laws 1882, c. 543, sec. 8, p. 871.

Tennessee and Mississippi Rivers Railroad Company, Laws 1882, c. 553, sec. 26, p. 1001.

Canton, Aberdeen and Nashville Railroad Company, Laws 1882, c. 554, sec. 8, p. 1009.

LEGISLATION IN 1884 ON SAME SUBJECT MATTER.

In the following charters granted in the succeeding session of 1884, the language of section 8 of the charter of the Yazoo and Mississippi Valley Railroad Company was followed with the significant exception that the final clause relating to taxation by cities and towns was struck out.

Mississippi River and Deer Creek Railroad Company, Laws 1884, c. 587, sec. 3, p. 919.

Memphis, Oxford and Columbus Railway Company, Laws 1884, c. 588, sec. 3, p. 920.

Terry, Brandon and Northeastern Railroad Company, Laws 1884, c. 594, sec. 3, p. 937.

Helena, Memphis and New Orleans Railroad Company, Laws 1884, c. 595, sec. 3, p. 938.

Arkansas City, Winona and Eastern Railroad Company, Laws 1884, c. 611, sec. 3, p. 971.

REFERENCES TO SOME PORTIONS OF CONSTITUTION AND LEGISLATION OF MISSISSIPPI RESPECTING MUNICIPAL TAXATION.

CONSTITUTION 1890: SEC. 181. The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals. * * * Exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature.

SEC. 182. The power to tax corporations and their property shall never be surrendered or abridged by any contract or grant to which the state or any political subdivision thereof may be a party, except that the legislature may grant exemptions from taxation in the encouragement of manufactures and other new enterprises of public utility extending over a period not exceeding five years, the time of such exemptions to commence from the date of charter if to a corporation.

SEC. 192. Provision shall be made by general laws whereby cities and towns may be authorized to aid and encourage the establishment of manufactories, gas-works, water-works, and other enterprises of public utility other than railroads, within the limits of said cities or towns, by exempting all property used for such purposes, from *municipal taxation* for a period not longer than ten years.

ANNOTATED CODE 1892, SEC. 2956 (Powers of Mayors and Aldermen of Cities and Towns):

Thirty-first. To aid and encourage the establishment of manufactories, gas-works, water-works and other enterprises of public utility other than railroads, within the corporate limits, by exempting all property used for such purposes from *municipal taxation* for a period not longer than ten years.

REVENUE LAW OF 1890.

(*Laws 1890, c. 2, p. 9.*)

SECTION 1. * * * Cities and towns are prohibited from levying or collecting any other tax on banks or on solvent credits owned by individuals or corporations, greater than 75 per cent. of the State tax.

SEC. 3 (p. 11). That the State tax for the year 1890 is hereby fixed and levied at three and one-half mills on the dollar, and for the year 1891 three mills for general purposes. * * *

REVENUE LAW OF 1894.

(*Laws 1894, c. 29, p. 25.*)

SEC. 3. The State tax for 1894 is hereby fixed at six mills on the dollar; and for the year 1895 at five mills on the dollar. * * * No city or town shall impose or collect a greater tax on banks or solvent credits than the State tax for the same year.[1]

EXEMPTIONS FROM MUNICIPAL TAXATION.

Brandon Street Railroad Company, Laws 1878, c. 300, sec. 9, p. 487.

Pass Christian City Railroad Company, Laws 1882, c. 536, sec. 10, p. 821.

City Railroad of Columbus, Laws 1882, c. 537, sec. 6, p. 82 (unlimited in time).

West Point Street Railway Company, Laws 1884, c. 59 sec. 10, p. 944.

Front and Asylum Street Railway Company (Meridian), Law 1884, c. 607, sec. 8, p. 956.

[1] Held unconstitutional in *Adams* v. *Bank*, 75 Miss. 701, 717, because violative of the "uniformity and equality clause," in that it discriminated between banks and solvent credits and other taxable property.

Memphis and Vicksburg Railroad Company, Laws 1884, c. 586, sec. 1, p. 917.

Hill City Street Railway Company (Vicksburg), Laws 1886, c. 133, sec. 7, p. 235 (unlimited in time).

The Revised Code of Mississippi of 1880, after providing for privilege taxes upon many occupations, etc. (sec. 585), provided in section 587 as follows:

"The privileges taxed, as above provided, shall not be * * * subject to taxation by any city or town to an amount exceeding fifty per centum of the tax above specified, unless expressly provided for by law." * * *

The same code provides for a fixed privilege tax upon railroads on a mileage basis, and substitutes such tax for *ad valorem* taxation for State and county purposes, but expressly excepts municipal *ad valorem* taxation (secs. 606, 607, continued by Laws 1884, c. 22, sec. 1, p. 30, and Laws 1886, c. 2, sec. 6, p. 23).

No. 324. 80

Brf. of Guthrie, Mayes, Fentress & Dickinson for P. E.

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Clerk.

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Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed April 9, 1900.

No. 324.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,

vs.

WIRT ADAMS, State Revenue Agent.

In error to the Supreme Court of the State of Mississippi.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

WILLIAM D. GUTHRIE,
EDWARD MAYES,
NOEL GALE,
For Plaintiffs in error.

JAMES FENTRESS,
J. M. DICKINSON,
Of counsel.

WASHINGTON, October Term, 1899.

Supreme Court of the United States.

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In error to the Supreme Court of Mississippi.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

Statement of the case.

This writ of error presents for review a final judgment of the Supreme Court of Mississippi (record, p. 43), which affirmed a judgment in favor of Wirt Adams as state revenue agent, against the Yazoo and Mississippi Valley Railroad Company, one of the plaintiffs in error, based upon certain taxes levied against the railroad company by cities and towns along its route for the twelve years from 1886 to 1897, inclusive. The Yazoo Company (*id.*, p. 17) denied its liability to pay these taxes upon the ground of an exemption embodied in section 8 of its charter, granted February 17, 1882, whereby it was provided as follows:

> "That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State,

necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi river, but not to extend beyond 25 years from the date of the approval of this act; and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by the treasurer of this State and paid into the State treasury, to be dealt with as the legislature may direct; *but said company shall be exempt from taxation by cities and towns*" (record, p. 34).

This same section of the charter was considered in *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, where the question related to exemption from state and county taxes, and it was held that the exemption from taxation for such purposes was conditional and did not take effect until the completion of the railroad to the Mississippi river. The plaintiffs in error have always heretofore insisted, with the acquiescence of the state departments, and now contend, that the concluding portion of the section above quoted confers an unconditional exemption "from taxation by cities and towns," and that it is not dependent upon the construction of the road to the Mississippi river. The taxes in question were imposed under the authority of general tax legislation of the State of Mississippi adopted in 1892 and 1894, and also under certain municipal charters (appendix, pp. i, ii), which, being subsequent to the charter conferring the exemption, impair, as enforced below, the contract in violation of section 10 of Article I of the Constitution of the United States.

The action was originally brought on July 7, 1897, by Wirt Adams above named, as state revenue agent, in the Circuit Court of Hinds County, Mississippi, to recover city and

town taxes for the years 1893 to 1896, inclusive, and the defendant demurred to the declaration as "not sufficient in law" (record, p. 5). The demurrer was sustained "on the ground that the exemption claimed by defendant in its charter of incorporation is perpetual and unconditional as to municipal taxes" (*ib.*). An appeal was taken by the state revenue agent to the Supreme Court of Mississippi, where the judgment was reversed on the ground that the exemption as to all taxation contained in the charter was conditional and dependent upon the completion of the railroad to the Mississippi river (*id.*, pp. 7, 8, 9). The cause having been remanded for a new trial, leave was granted the state revenue agent to so amend his declaration as to include city and town taxes for the years 1886 to 1892, inclusive, and for the year 1897, which was accordingly done (*id.*, p. 10 *et seq.*), so that the suit involves back taxes for twelve years. The railroad company pleaded, *first*, the general issue, and also filed special pleas as follows: *second*, to the effect that its railroad was completed to the Mississippi river on October 25, 1892, by means of the consolidation between it and the Louisville, New Orleans and Texas Railway Company, which was the owner of certain railroads reaching the Mississippi river (*id.*, p. 17); *third*, setting up an ordinance of the city of Jackson, passed May 5, 1882, whereby its property was "released from all city taxation for twenty years from date," on condition that Jackson be selected as a southern terminus of the Yazoo and Mississippi railroad, and also that work on said road be commenced within one year and completed within three years to Yazoo City, and alleging its compliance with said conditions (*id.*, p. 18); *fourth*, setting up specifically its charter exemption as a contract with the state under which its railroad had been built (*id.*, p. 21).

Demurrers to the second, third and fourth pleas having been sustained (record, pp. 23, 24, 42), the action was tried by jury upon the issues raised by the plea of the general issue, the trial resulting in a judgment against the railroad company (*id.*, p. 25), from which a second appeal was taken to the Supreme Court of the state, where the judgment was affirmed (*id.*, p. 43). The present writ of error was sued out to review that judgment, and was allowed by the Chief Justice of Mississippi (*id.*, p. 45), who certified that the validity of the subsequent tax legislation was drawn in question as repugnant to section 10 of Article I of the Federal Constitution (*id.*, p. 46).

Jurisdiction of this court.

So far as the jurisdiction of this court is concerned, the cognate case of *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, should be conclusive. The contract involved is the same. The subsequent tax legislation is similar in effect. The only appreciable difference between the two cases is that in the former suit the question was at what time the exemption as a whole began to run, and in this suit the question is whether another portion of the exemption is or is not limited and conditional. The federal question was distinctly raised, and the court below could not have reached the conclusion adverse to the railroad company without deciding it (record, p. 21). The case of *Keokuk & Western Railroad* v. *Missouri*, 152 U. S. 301, is also directly in point upon this question. In both these cases motions to dismiss were denied. See, also, *Mobile & Ohio Railroad* v. *Tennessee*, 153 U. S. 486, 495, and *McCullough* v. *Virginia*, 172 U. S. 102, 116. In the latter case, the opinion in *Yazoo Railroad Co.* v. *Thomas*, *supra*, was quoted with approval.

Specification of errors.

The plaintiffs in error assert and intend to urge and rely upon the following errors of the court below, viz.:

1. That the court erred in holding that the provision in question did not constitute a contract for unconditional exemption from taxation by cities and towns.

2. That the court erred in permitting a recovery of taxes levied by cities and towns under and by virtue of laws passed subsequent to the charter of the plaintiff in error, and in thereby giving effect to statutes which impaired the obligation of the contract.

The questions to be considered are as to the validity of the exemption and as to its true interpretation.

I.

THE CHARTER GRANTS A VALID EXEMPTION UNDER THE CONSTITUTIONS OF MISSISSIPPI.

In the case at bar, precisely as commented on by Mr. Chief Justice Fuller in the case of *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, 184, "the Supreme Court of Mississippi did not put its decision upon the ground that it was not competent under the state constitution for the State to contract with the company that the latter should not be subjected to taxation, but upon the ground that the exemption claimed could not be allowed." The only question then discussed or decided by the state court and by this court on that writ of error was the construction of the contract of exemption. So, here, the only question discussed or decided below was as to the true construction of the contract of exemption, and it was assumed that the contract was constitutional (record, pp. 7, 43). No question as to the constitutional power of the legislature to grant the exemption was deemed to be involved. Under these circumstances, it is assumed that this court may properly confine its examination of the judgment under review to the precise point of statutory construction

upon which the case turned in the court below and the alleged impairment of the contract as properly construed, and that any consideration of the validity of the contract of exemption under the state constitution of 1869 may well be deferred until the state court shall see fit to pass squarely upon that point. In other words, the rule ought to be that, where the state court does not decide that the statute is unconstitutional, but merely interprets it as not conferring the alleged contract right, and thus treats the contract as valid and subsisting, this court will not investigate the constitutionality of the statute, and will confine itself to the questions decided below.

But if the court may, nevertheless, now consider and determine the constitutional validity of the contract contained in section 8 of the charter of the Yazoo Company, it is submitted that this contract of exemption from taxes by cities and towns is in no wise obnoxious to or violative of any provision of the Mississippi constitution of 1869, and that, being valid under that instrument, the exemption has been expressly confirmed and continued by the state constitution of 1890.

As early as 1878, four years before the granting of this charter, the Supreme Court of Mississippi in the case of *Mississippi Mills* v. *Cook*, 56 Miss. 40, 52, construing the provisions of section 13 of article XII of the constitution of 1869, determined that this section did not of itself prohibit exemptions, but only declared the liability of corporations to taxation in the discretion or judgment and subject to the control of the legislature. This authoritative construction of the constitution, subsequently reiterated, became as much a part of the constitution of 1869 as the text itself. *Douglass* v. *County of Pike*, 101 U. S. 677. That this construction of the meaning of

the constitution of 1869 was not strained or unreasonable is shown by the legislation of Mississippi for many years prior to the adoption of that constitution, from which it appears that the legislature, when granting charters of incorporation, had often thought it necessary to provide that the corporations should be "subject to taxation" in terms either precisely like those adopted in the constitution of 1869, or having the same effect in substance. The construction adopted in *Mississippi Mills* v. *Cook*, therefore, involved no departure or change or new rule as to corporate taxation. It simply recognized that the constitution had made that general which before had been special, and had embodied this common provision of liability to taxation, instead of leaving it to be dealt with by changing legislatures in each particular case. Many of these acts are referred to in the appendix (pp. iv, v), and contain conclusive evidence of the meaning which was generally attributed in the legislation of Mississippi to the clause under consideration when the constitution of 1869 was adopted. The rule was analogous to that laid down in Massachusetts and Pennsylvania, where the property of railroad and other companies serving a public purpose was held not subject to taxation under general statutes. *Inhabitants of Worcester* v. *The Western Rail Road Corporation*, 4 Met. 564, 566; *Lehigh Coal and Navigation Company* v. *Northampton County*, 8 W. & S. 334, 338. The framers of the constitution of 1869 undoubtedly intended to subject all corporations to the power of taxation under the general tax laws, but with discretion in the legislature to grant, as theretofore had been the constant practice, repealable or limited exemptions.

And this was the uniform and consistent practice of the legislature. Thus, at almost every session held between

the adoption of the constitution of 1869 and the adoption of the constitution of 1890, exemptions from taxation were granted, not only to railroad companies, but to other corporations for profit, which were supposed to serve in some sense a public purpose. The acts granting these appropriations are referred to in the appendix (pp. vi–xi), and exhibit a fixed and consistent course of legislation upon this subject. We may form some idea of the extent of this policy of exemption from the fact that between the years 1870 and 1890, inclusive, at least one hundred and twenty acts were passed granting exemptions to various corporations. These acts amount to a legislative construction of the highest authority respecting the true meaning of this portion of the constitution of 1869, and ought to receive much weight in determining not only the proper interpretation of the constitution of 1869, but what the exemptions were which the constitution of 1890 intended to ratify and continue.

The same view of the validity of these exemptions prevailed in the other departments of the state government. The executive officers of the state, including its law officers, uniformly, for fully twenty years, adopted the same construction and consistently acted upon it. In the judicial department the decision in *Mississippi Mills* v. *Cook*, *supra*, was followed without break for twenty years, as will be seen by reference to the following cases involving, in one way or another, the question of the constitutionality of exemptions under the constitution of 1869: *McCulloch et al.* v. *Stone*, 64 Miss. 378; *Y. & M. V. R. R. Co.* v. *Thomas et al.* 65 Miss. 553; *Vicksburg Bank* v. *Worrell*, 67 Miss. 47; *Attala County* v. *Kelly*, 68 Miss. 4[illegible]; *L., N. O. & T. Ry. Co.* v. *Taylor*, 68 Miss. 361; *Railroad Co.* v. *Lambert*, 70 Miss. 779.

This long continued practice of the legislative, executive and judicial departments ought to be most convincing as to the legality of these exemptions. No rule of interpretation is better settled in this court than that which gives to such practice and interpretation great weight. In *The Laura*, 114 U. S. 411, 416, Mr. Justice Harlan, citing *Stuart* v. *Laird*, 1 Cranch, 299, 308, said:

> "Touching the objection now raised as to the constitutionality of the legislation in question, it is sufficient to say, as was said in an early case, that the practice and acquiescence under it, 'commencing with the organization of the judicial system, affords an irresistible answer, and has indeed fixed the construction.'"

And in *Ogden* v. *Saunders*, 12 Wheat. 213, 290, Mr. Justice Washington said that the doctrine

> "proceeds upon the presumption, that the cotemporaries of the constitution have claims to our deference on the question of right, because they had the best opportunities of informing themselves of the understanding of the framers of the constitution, and of the sense put upon it by the people when it was adopted by them."

In view of the fact that the investment by stockholders and creditors of the Yazoo Railroad Company was clearly made in reliance upon this established practice as to exemptions and of the authoritative interpretation of the highest court of the state affirming the constitutional power to exempt, the following language of Mr. Justice Swayne in *Township of Pine Grove* v. *Talcott*, 19 Wall. 666, 677, is singularly applicable:

> "When the bonds were issued, there had been no authoritative intimation from any quarter that such statutes were invalid. The legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them. The acquiescence was universal."

See, also, *Briscoe* v. *The Bank of the Commonwealth of Kentucky*, 11 Pet. 257, 318; *Prigg* v. *The Common-*

wealth of Pennsylvania, 16 Pet 539, 619; *Cooley* v. *Board of Wardens of Port of Philadelphia et al.* 12 How. 299, 315; *Auffmordt* v. *Hedden*, 137 U. S. 310, 329; *Schell's Executors* v. *Fauché*, 138 U. S. 562, 572; *Field* v. *Clark*, 143 U. S. 649, 691; *McPherson* v. *Blacker*, 146 U. S. 1, 27; *Kennedy* v. *Gies*, 25 Mich. 83, 92. The Mississippi authorities are to the same effect: *Daily* v. *Swope, Guardian, etc.* 47 Miss. 367, 383; *French* v. *The State*, 52 Miss. 759, 762; *Shotwell* v. *Covington*, 69 Miss. 735, 738; *Chrisman* v. *Brookhaven*, 70 Miss. 477, 483.

As Simrall, J., said in *Hawkins et al.* v. *Caroll Co.* 50 Miss. 735, 752 (1874):

> "At the time of the adoption of the constitution, the power of the legislature to authorize municipal aid to these enterprises, coupled with the delegated authority of taxation, was well established, both by legislative precedents and judicial decisions in this and the other states."

And Mitchell, J., said in *State* v. *Luther*, 56 Minn. 156, 164:

> "This amounted to a legislative construction of the constitution, which of itself would be entitled to great weight."

The Supreme Court of California said in *Emery* v. *Reed*, 65 Cal. 351:

> "We have frequently said that, with respect to laws passed under the late Constitution, the construction put upon them by the highest court in existence under it, would be accepted by us without regard to our own views in respect to the correctness or incorrectness of that construction."

It is particularly worthy of note that in both the cases involving the charter under consideration[1], the Mississippi court has preferred to place its decision upon the construction of the charter. Not until the decision of the Mississippi Supreme Court in *Adams* v. *Yazoo & Mississippi*

[1]This case, 76 Miss. 545, 550 and *Yazoo & Mississippi Valley R. R.* v. *Thomas*, 65 Miss. 553, 562; S. C. 132 U. S. 174.

Valley Railroad Company (No. 244 on this docket) was the theory developed that all exemptions of corporate property were invalid.

II.

THE EXPRESS RATIFICATION CONTAINED IN THE CONSTITUTION OF 1890.

At the time of the adoption of the constitution of 1890, the validity of exemptions was so firmly established in Mississippi that there can be no reasonable doubt as to what the common understanding of the framers of the constitution was upon the subject. That constitution provided (section 181):

> "*Exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature.*"

It is clear that this provision of the new constitution was intended to apply to and preserve exemptions such as that involved in the case at bar, from the fact that, except in the case of two or three small private schools, altogether insignificant in the fiscal system of the state, there were in 1890 no corporations entitled to exemptions which had been granted prior to 1869. Exemptions had been commonly granted before that time, but they had either never been availed of, or had terminated by expiration of the period for which they were granted, or had lapsed for other cause.[1] Practically all corporate exemptions, therefore, such as are mentioned in section 181 of the new constitution, must necessarily have been granted under the constitution of 1869, and these were the exemptions which the framers of the constitution of 1890 had in mind and which they intended to protect in good faith.

[1] The exemption of the Mobile and Ohio Railroad Company had been surrendered in 1882 in consideration of a release by the state of a debt due it from the company, amounting to over $300,000. Appendix Senate Journal, 1882, Governor Lowry's message.

Surely, the use of the word *legally* was not intended to deprive the section of all practical force and effect or to conceal a snare.

In *State* v. *Luther*, 56 Minn. 156, 164, it appeared that after a continuous course of legislation in respect to commuted taxation upon corporations, which was said to amount to "a legislative construction of the constitution, which of itself would be entitled to great weight," a constitutional amendment was adopted providing for the submission of any law for the repeal of such statutes respecting commuted taxation to a vote by the people. Mitchell, J., said:

> "This language must have been selected and this amendment adopted with reference to the existing legislation and the general legislative policy to which we have referred; and, read and construed in that light, it amounts to a clear recognition of the validity of existing laws providing for this commuted system of taxation of railroad property and lands, and of legislative power to enact such laws for the future. If it did not refer to this, there was nothing to which it could refer. It is, by necessary implication, a validation of past legislation of that kind, and a grant of power to enact it in the future."

The legality of exemptions in Mississippi under the constitution of 1869 had been declared and upheld prior to 1890 by at least four decisions of the highest tribunal of the state. The constitution of 1890, therefore, referred to a class of exemptions sanctioned by the legislative practice of many years under the constitution in force, permitted by the universally accepted construction of that constitution, and confirmed and declared by the highest state court. These were the exemptions "to which corporations are legally entitled." The language of section 181 fairly applies to no other subject-matter.

No more persuasive union of all canons of constitutional construction and interpretation can well be imagined

than are found in this case as to the legislative power to grant exemptions, namely, (1) a common course of legislation evincing the universally entertained view of corporate liability to taxation, and recognizing the necessity for providing that corporations should be "subject to taxation," which view continued for many years; (2) the adoption of that view of liability to taxation in the constitution of 1869; (3) a judicial inquiry into the validity of claims for exemption, and a judicial declaration of their validity; (4) common and long-continued legislative recognition, under the constitution of 1869, of the legality of the exemption and repeated refusals by the legislature to repeal such exemptions; (5) continuous acquiescence by the executive department and by those charged with the collection of taxes; and (6) a subsequent constitution, dealing with existing exemptions necessarily created under the constitution of 1869, and confirming those to which corporations were "legally entitled" In truth, the convention which adopted the constitution of 1890 could not have indicated more plainly that it meant to confirm and continue such exemptions as that claimed by this plaintiff in error if it had specifically named and included them in that instrument.

This charter contract of exemption, if valid, is clearly impaired by the subsequent state legislation of 1892 and 1894, and by the municipal charters, under the authority of which, and not otherwise, the state revenue agent has prosecuted the suits resulting in the judgment now under review.

The question then remains whether, under a proper construction of the section of the charter containing the exemption, the plaintiff in error is unconditionally exempted from "taxation by cities and towns," or whether

this particular part of the exemption is dependent upon the completion of the railroad to the Mississippi river.

III.

THE CHARTER CONFERS AN UNCONDITIONAL EXEMPTION FROM TAXATION BY CITIES AND TOWNS.

Section 8 of the charter, after granting an exemption "for a term of twenty years from the completion of said railroad to the Mississippi river," and providing that, after the expiration of the period of exemption, "the property of said railroad may be taxed at the same rate as other property in this State," contains the separate and distinct provision, "but said company shall be exempt from taxation by cities and towns." The last-quoted provision is found at the end of the section, and follows a provision relating solely to the collection and disposition of state and county taxes upon the property of the company.

There can be no doubt that taken alone, the last clause of section 8 confers an unconditional exemption from taxation by cities and towns. Such is the plain import of its language. It is, however, contended that the preceding portions of the section show that the exemption is conditioned upon the completion of the railroad to the Mississippi river; and the Supreme Court of Mississippi, adopting this view, based its decision upon the following grounds: first, that no reasonable explanation could be suggested for an unconditional exemption of the railroad company from taxation by cities and towns, while the exemption from state and county taxation was limited and conditional; second, that the entire concluding sentence of the section does not refer to the preceding exemption from state and county taxation, but is an effort to create a peculiar scheme of taxation; and, third, that a literal construction of this clause of exemption would embrace

all property of the railroad company, whether necessary for its operations or not. To this reasoning, the answers are, first, that the legislature of Mississippi has repeatedly laid down rules for municipal taxation differing from those for state and county taxation, thus recognizing the distinction between the two powers, and that there were in the present instance substantial reasons for a difference in the application of the exemption; second, that the only construction which will give effect to the clause in question results in unconditional exemption, and that it is immaterial if the result may be to create a peculiar scheme; and, third, that the exemption, if construed to be unconditional, would not extend to property not necessary for the operations of the railroad company, and, even if it did, that consideration cannot change the effect of the language used by the legislature.

First. The people and the legislature of Mississippi have during a long period consistently treated the three powers of taxation, state, county and municipal, as differing in their nature because obviously affecting different interests, and have often prescribed regulations as to municipal taxation differing widely from the regulations as to county and state taxation (constitution of 1890, section 192; section 2956 of the annotated code of 1892; revenue law of 1890, laws of 1890, pp. 9, 11. Statutes are cited in the appendix (pp. iii., iv.) which show the broad distinction constantly drawn between the imposition of state and county taxes upon the one hand and of municipal taxes upon the other hand. In the constitution of 1869 itself there was a distinct provision in respect to the right of counties to lay special taxes (appendix, p. xi.). At almost every session of the legislature, exemptions have been granted discriminating sharply between these different

burdens in almost every conceivable way, as will be seen by reference to the appendix, pp. v., vi.

In *Daily* v. *Swope*, *Guardian*, *etc.* 47 Miss. 367, 379 (1872), Simrall, J., emphasized the distinction which had prevailed between state and city taxation by saying:

> "It is quite well known, too, that the system of taxation in the city has greatly differed from that used by the state, both as to rate and apportionment. This has always been so. Long experience has approved the policy."

Now, the fundamental inquiry is, of course, to ascertain the intention of the legislature as we may gather it from the language used in this act and from other statutes *in pari materia*. Both sides agree that it was the *intention* to grant exemptions from taxation by state and counties, as well as by cities and towns. On the one hand, the contention of the state revenue agent is that it was the *intention* of the legislature that all these three established and differing forms or methods of taxation, namely, (1) by state, (2) by counties, and (3) by cities or towns, should be alike and equally subject to the condition of the "completion of said railroad to the Mississippi river." On the other hand, the contention of the plaintiff in error is that the legislature clearly intended a difference; that the language used obviously indicates this, and that otherwise the present language would not have been used.

In order to adopt the contention of the revenue agent, we must conclude, first, that the legislature intended that the prior provision "shall be exempt from taxation for a term of twenty years" should include "taxation by cities and towns"; and, secondly, that the separate and distinct provision at the end of section 8, "but said company shall be exempt from taxation by cities and towns," has absolutely no significance, and expresses no thought or intention in addition to what had been previously expressed.

Of course, the rules are perfectly well established that effect should be given to every part of a statute and no part disregarded (*Market Co.* v. *Hoffman*, 101 U. S. 112, 115; *Bernier* v. *Bernier*, 147 U. S. 242, 246); that, if there be any apparent inconsistency or clashing or ambiguity, the last sentence or expression is to be given preference, and that general terms must be read in connection with and as limited by particular provisions (Endlich on Interpretation of Statutes, sec. 399), especially if the particular provisions tend to modify the general terms. These well-established canons of interpretation, which experience has shown to be safe guides, must be disregarded if the view of the court below is now to be approved. But if we adopt the interpretation of the railroad company, which was the practical construction for more than a decade by the state and municipal authorities themselves, and by the officers particularly charged with the enforcement of the law (*Edwards' Lessee* v. *Darby*, 12 Wheat. 206, 210; *Union Insurance Company* v. *Hoge*, 21 How. 35, 66; *Havemeyer* v. *Iowa County*, 3 Wall. 294, 303; *United States* v. *Moore*, 95 U. S. 760, 763; *Heath* v. *Wallace*, 138 U. S. 573, 582), we follow the settled canons above mentioned, and give due effect to every word found in section 8.

Perhaps the strongest evidence of the intention of the legislature of 1882 is to be found in the difference in phraseology between the charter under consideration and other charters granted at the same session. The charters of the Yazoo and Mississippi Valley and the Canton, Aberdeen and Nashville Railroad Companies, passed upon the same day, contain identical provisions as to taxation and exemption; and this language was used by the legislature in several other charters granted at that session (see appendix, p. 111). But, when the same legislature decided to limit the exemp-

tion from municipal taxation in point of time, it inserted in certain other charters provisions expressly restricting such exemption. In one case, the proviso was as follows: "*provided*, the exemption in towns and cities shall not be more than twenty years."[1] In another act the proviso was: "*provided*, that this act shall not prevent the city of Meridian from levying municipal taxes on said railroad and its property, after the exemption period of twenty years shall have expired."[2] In still a third charter the exemption from municipal taxation was thus limited: "*provided*, the municipal authorities of the city of Meridian may impose such taxes on said railroad company and its property of every description as may be imposed on other railroads and property of like character after the said period of exemption of twenty years *have* expired."[3]

It thus appears that not only did the legislature repeatedly make use of a distinction between these forms of taxation, but also that the very legislature which passed the charter now under consideration, whenever it desired to limit the term of an exemption from municipal taxation, did so in express and unmistakable terms.

Moreover, for many years, and at the time of the adoption of the constitution of 1890, the practical construction of the Yazoo Company's charter had been that the exemption from taxation by cities and towns was unconditional, and the various departments of the state government had uniformly sanctioned such a construction and had acted thereon, showing ample recognition of and acquiescence in the practical difference between the two forms of taxation.

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[1] Laws Mississippi, 1882, c. 551, sec. 27, p. 975.
[2] Laws Mississippi, 1882, c. 549, sec. 22, p. 959.
[3] Laws Mississippi, 1882, c. 568, sec. 22, p. 1065.

There were, in the present case, ample reasons for the exercise of this discrimination, and for making the exemption absolute as to one form of taxation and limited as to the others. In 1882, the State of Mississippi had for many years been attempting to improve its means of communication with outside markets. Prior to that time, existing conditions had made it almost impossible to obtain the construction of railroads in the Mississippi delta, forming about one-sixth of the state. At the session of 1882, the legislature passed sixteen acts incorporating railroad companies, and every one of these charters was granted with a view to obtaining for the inhabitants of the state the advantages which would flow from closer connections with the avenues of interstate commerce, not the least of which would be the benefit of competitive freight rates. The future prosperity of the state depended absolutely upon increased facilities for transportation of cotton, its great staple commodity. The legislature in granting this charter was providing for the construction of one or more railroads from the existing line of the Chicago, St. Louis and New Orleans railroad to the Mississippi river, a distance of from fifty to ninety miles, thus connecting two great routes of state and interstate commerce. Provision was also made for from one to three lines of road running north and south throughout the entire length of the state, and for an unlimited number of branches, not to exceed one hundred miles in length. The charter in fact authorized the company to create a complete network of tracks over the entire western half and more thickly populated part of the state. Prior to 1882 the only railroads in that portion of the state known as the Mississippi river basin were two small disconnected narrow-gauge roads aggregating one hundred miles in length. This extensive territory,

extending one hundred and eighty miles north and south and about sixty miles east and west, and containing the richest lands of the state, was thus dependent for internal communication upon imperfect turnpikes or highways, except so far as the Yazoo river provided a limited means of navigation. A map issued by the post-office department, upon which the mail service in this region is indicated as of January 1, 1880, shows that except on the Mississippi river mail service was generally restricted to once a week. In a few cases a service of twice a week was maintained. In two counties only was mail conveyed as often as three times a week.

The railroad of the Yazoo Company was built, beginning at Jackson, a station on the Chicago, St. Louis and New Orleans railroad, and continuing through Yazoo City and Greenwood to Parsons, in order to afford local railroad facilities to a number of towns and cities which had not theretofore had any means of railroad communication either with each other or with the "railroad system of the country."[1] Although the line was not completed to the Mississippi river and thus did not earn the exemption from state and county taxes, it nevertheless did fulfil a very evident and important part of the plan, by providing for these scattered municipalities facilities for the carriage of freight and passengers, frequent mails, and all the other advantages which can only be afforded by railroad communication and by "connecting them by railroads and branches with other railroads" (see preamble to charter). Moreover, the one piece of railroad which by the charter (sec. 2, end of

[1] Preamble to charter, record, p. 27. Indeed, the preamble speaks of connecting the alluvial lands of the state "by railroads and branches with other railroads west, east, north and south," and states that the physical difficulties have been such "that no private company has so far been able to establish a railroad and branches developing said basins and alluvial lands, and connecting them with the railroad system of the country."

first paragraph[1]) was required to be "extended to or to pass through Yazoo City," was so built not only from Jackson to Yazoo City, about forty-five miles, but it was extended beyond to Parsons, a distance of about one hundred miles from Jackson; and it was also connected by means of a branch from Tchula to Lexington with the West and East railroad and in this manner again with the C., St. L. & N. O. railroad at Durant, thus affording to towns on the Yazoo and Mississippi Valley railroad a direct route to the eastern part of the state by way of the Canton, Aberdeen and Nashville railroad and its connections.

There is, in the very nature of things, a broad distinction between a local railroad merely connecting small cities and towns with each other, and a general system reaching out and joining together important and competing routes of commerce between the states. A legislature might naturally and wisely declare that it would not exempt a railroad company from state or county taxation until it formed such a connecting link as to become helpful and profitable to the whole state and to all of the counties through which it ran, by affording speedy communication and the advantages of through competing rates; while at the same time there would be adequate reason for freeing the road from the burden of taxation by cities and towns which would benefit largely and immediately by its construction, irrespective of a final completion to the proposed terminus at the Mississippi river.

The charter (section 2) clearly makes this distinction by first requiring the building of the line to "the Mississippi river at or near a point opposite Arkansas City *if practicable*, so as to connect such point . . . with some point or points on the line of the Chicago, St. Louis and New

[1] Record, p. 28.

Orleans Railroad" and then immediately providing that "one of said lines, or a branch therefrom, to be extended to or pass through Yazoo City," *without adding the words "if practicable."*

Moreover, the difficulties of construction in the Yazoo delta were so great that the exemption from state and county taxation might well be withheld unless this more expensive and hazardous portion of the work should be assured and completed. Special inducements might be offered to secure this end. But the construction of the road to or between any cities and towns in the populous and high-land district, through a settled country, was much simpler and less costly and could not fail to be of immediate and appreciable benefit to their inhabitants, which might well be recompensed by an exemption from local taxation, leaving the other portion of the exemption to be earned by a completion of the broader scheme in which the whole state and the people of the counties were more vitally interested.

Second. The language of the last sentence of section 8, regarding taxes to be collected by the treasurer of the state and paid into the state treasury, is applicable to the taxes "whether for county or state," to which the property of the company might be subject, and, except that it occurs in the same section which deals with the exemption, has no logical connection with it. It was perhaps the intention to lay down as to state and county taxes a new rule for their collection and custody, and there is no reason why in connection with this new provision the legislature may not have seen fit to prescribe a still different rule as to taxation by cities and towns and to altogether relieve the company therefrom. If, as the court below held, the object of the

last part of the section was "to create a scheme of taxation peculiar to the road," the subsequent exemption from municipal taxation is not at all inconsistent with the scheme. This was not only a suitable place to insert a provision for unconditional exemption, but it was the place in which the draughtsman of a statute would naturally write the provision, and where the reader would first look for it.

The court will have to strike from the act the words "but said company shall be exempt from taxation by cities and towns" in order to arrive at the result claimed by the defendant in error; but the words cannot be left in the act, and full and adequate meaning be given to them, without arriving at the conclusion that an unconditional exemption was intended to be granted as to taxation by cities or towns, as the language used fairly imports, without regard to the provision in respect of state and county taxes.

The case of *Savannah* v. *Jesup*, 106 U. S. 563, 567, is strong authority for a construction of the act excluding taxation by cities and towns from the prior provisions of the section in question. In that case, the railroad company had formerly possessed an immunity from taxation except to a limited extent, which had, however, been taken away from it by the statute held to be constitutional in *Railroad Co.* v. *Georgia*, 98 U. S. 359. The later act provided for tax returns by railroad companies direct to a state official, for payment of taxes to him, and collection thereof by him. This court held that the effect of the act was to establish a system of taxation by the state for its benefit exclusively and that, therefore, the company was not liable to taxation by a city, although it was not expressly exempted. This conclusion was reached in spite of the fact that the act provided that the property of the company should be liable "to be taxed as

other property of the people of the state," somewhat similar to the provision of the Mississippi constitution of 1869. Mr. Justice Harlan said (p. 568):

> "The statute, thus imposing, in behalf of the State, taxes to be collected by its officer, and to be paid, when collected, into its treasury, provides no machinery by means of which the property of railroad companies may be taxed by municipal corporations for local purposes. No provision is made for taxation by the municipal authorities of counties, cities, and towns, through which the road passes, of such portion of the company's property as was within their respective limits. Nor is any provision made for the transmission by the comptroller-general to such local authorities of the returns made to him by railroad companies of their property for taxation. Had the statute done nothing more, in the cases of railroad companies whose charters were subject to legislative repeal or modification, than to withdraw the immunity from taxation theretofore enjoyed by them, there would be more force in the position taken by the city of Savannah. But such is not the case; for, in the same act requiring taxation, for the benefit of the State, of all the property of railroad companies, and which, therefore, operated as a withdrawal of the then existing right of limited exemption from taxation, the legislature makes the returns to the comptroller-general by the railroad companies of their property the only basis of the taxation to which, by its provisions, they are to be thereafter subjected. The mode prescribed by the statute for the payment of taxes by railroad companies has reference exclusively to taxes to be paid to the State, and not to municipal corporations. It seems to the court that the legislature did not intend, when imposing, as was done by the statute of 1874, taxation for the State upon all the property of railroad companies, to put upon the same property the additional burden of municipal taxation, which, had not that act been passed, would have been forbidden by the charters of those companies. The city relies upon that statute as opening the door for municipal taxation upon all the property of the railroad company which was taxable under any law of the State. But as the State simply substituted, for taxation to a limited amount, taxation for the benefit of the State upon all the property of the company according to its value, we do not think that the railroad company could be subjected to additional taxation upon the part of the city of Savannah without further legislation to that end."

This reasoning seems applicable to the case at bar. In the case cited, as here with respect to state and county taxes, all taxes were to be paid direct to a state official. No machinery was provided in either act for taxation of the property of the railroad by the municipal authorities. In both cases, the state had full power to deal with the taxes paid to it. In the present case, no way is provided by which the proceeds of any taxes levied by cities or towns could be withdrawn from the state treasury and paid to the municipalities interested. The purpose of the act is general, intended to apply to all state and county taxes to which the property of the company may be subject, and after having provided a uniform and comprehensive scheme for dealing with state and county taxes, expressly exempts the company from another form of taxation, namely, "by cities and towns." This view of the charter was mentioned by Mr. Chief Justice Fuller in *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, 189, when he said:

> "Since upon the expiration of the period of exemption, it would have followed that the property of the company would be subject to taxation at the same rate as other property, it may be that the object of the final clause was to create a scheme of taxation peculiar to the road. Upon the comprehensiveness and validity of such scheme we do not undertake to pass. It was not to take effect until the exemption expired, and the terms in which it was couched do not render the commencement of the exemption other than the Supreme Court held it to be."

But the present case is far stronger for an exemption from municipal taxation than was the *Savannah* case, for here we have the absolute, unequivocal declaration of exemption from taxation by cities and towns in the same sentence which, as it was held below, created a "scheme of taxation peculiar to this road"; while in the former case the exemption was really inferred from the provisions of the act.

Third. So far as the third reason for the decision of the court below is concerned, it is submitted that the case of *McCulloch et al.* v. *Stone*, 64 Miss. 378, affords a sufficient answer, without citing other familiar authorities. In that case it was held in substance that the provision for the appropriation of taxes to the payment of construction debt contained in the charter of the Louisville, New Orleans and Texas Railway Company (now under consideration in No. 244 of this docket) applied only to taxes on property appurtenant or necessary to the operations of the railway company, and could not be extended to property disconnected therefrom. The same reasoning would apply fully to the case at bar, and would operate to limit the exemption from municipal taxation to property actually used by the railroad for the purposes of its incorporation. Such, indeed, is the well-established rule of interpretation. But, whether or not this is so, it is submitted that the construction of the act is not to be determined by judicial inquiry as to the wisdom or policy of legislative enactments; that the true intent of the legislature must control within constitutional bounds, even if it included all property, and that the judicial department has nothing to do with the reasons which underlie that intent. Each department, legislative and judicial, will thus be kept within its proper sphere.

Conclusion.

For the foregoing reasons, it is submitted that the judgment of the Supreme Court of Mississippi should be reversed.

Washington, October Term, 1899.

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APPENDIX.

A.

GENERAL MUNICIPAL TAX LEGISLATION OF MISSISSIPPI CLAIMED TO IMPAIR THE EXEMPTIONS.

Annotated Code of 1892.

2925. *Powers of Mayor and Board of Aldermen.*—The mayor and board of aldermen of every city, town, and village shall . . have power—

2926. FIRST. *Taxes for general revenue and improvements.*—To levy and collect taxes upon all the real, mixed, and personal property within the corporate limits taxable according to the laws of the state, the valuation of such property to be taken from the assessment-rolls of the county; For general revenue purposes, not to exceed six mills on the dollar in any one year; for general improvements, excepting improvements for which special assessments are levied, not to exceed six mills on the dollar in any one year. But a village with less than three hundred inhabitants shall never pay its officers any salary or compensation, nor levy a tax on real or personal property to exceed, for all purposes, four mills on the dollar for any one year. In cities of over five thousand inhabitants a tax, not exceeding twenty mills on the dollar, may be levied for general revenue and improvements and special school-systems, each; but this shall not authorize the levy of a tax in excess of the limit on the power of taxation by such city now fixed by law, unless the same be authorized by a majority vote of the qualified electors.

2927. SECOND. *Taxes to pay bonds and coupons.*—To levy and collect annually taxes on all the taxable property within the municipal limits, in addition to other taxes, in a sufficient amount, for the purpose of paying the interest-coupons as they become due, on all bonds of the municipality now issued or hereafter to be issued, and the bonds themselves, which tax shall be payable only in cash or in matured coupons or bonds.

3035. *Application of the chapter.*—From and after the date that this chapter becomes operative, every municipality in the state shall exercise the powers conferred herein on the class to which it belongs, and shall be governed by the provisions thereof. But an existing municipality, by resolution of its corporate authorities, entered of record and certified to the secretary of state within twelve months after this chapter becomes operative, may elect not to come under the provisions hereof.[1] . .

[1] As matter of fact, no municipalities have elected not to come under the provisions of the code.

B.

MUNICIPAL CHARTERS SUBSEQUENT TO YAZOO AND MISSISSIPPI VALLEY CHARTER WHICH IMPOSED TAXES, AND THEREBY IMPAIRED THE CONTRACT.

Charter of town of Tchula, Laws 1882, sec. 6, p. 328:

That the mayor and aldermen * * * may levy taxes on all the property of the town, real and personal, that may be subject to taxation under the general revenue laws of this State, not exceeding fifty per cent. of the amount of the State tax, to be expended for municipal purposes. * * *

Charter of Yazoo City, Laws 1884, sec. 14, pp. 570, 575:

Said council shall have power by ordinance— * * *

TWENTY-NINTH—To levy and collect taxes on all property and privileges as hereinafter provided.

Sec. 15, p. 576. Said council shall have power by ordinance to levy and collect annually for corporation purposes,

ONE—A tax not exceeding one per centum *ad valorem*, on all property, real, personal and mixed, situated or belonging in said city. * * *

Sec. 16, p. 579, provides specifically for the assessment and collection of taxes.

Charter of town of Lexington, as amended by Laws 1884, sec. 1, p. 746:

All the provisions of the Revised Code of 1880, of this State with reference to the assessment, levy and collection of State and county taxes, be and the same are hereby declared to be the law for the assessment, levy and collection of the taxes of the town of Lexington, * * * provided, the town council may by ordinance, change and alter the time for the assessment, levy and collection of taxes, and provided further, that the rate of taxation for town purposes shall not exceed the rate of one-half of one per cent.

Charter of town of Flora, Laws 1886, sec. 10, p. 501:

The board of mayor and aldermen shall have power from time to time to make provisions for assessing tax valuations of taxable property in said town, that the taxes so assessed if not paid shall be collected in the same manner in which State and county taxes are collected, * * * *provided*, that in no case shall the tax levied by said board of mayor and aldermen exceed one-fourth of one per cent. upon the property subject to taxation.

C.

CONTEMPORANEOUS LEGISLATION OF 1882.

The language of the concluding sentence of section 8 of the charter of the Yazoo and Mississippi Valley Railroad Company is found in the following charters granted at that session of the legislature:

Alabama and Mississippi Railroad Company, Laws 1882, sec. 8, p. 871.

Tennessee and Mississippi Rivers Railroad Company, Laws 1882, sec. 26, p. 1000.

Canton, Aberdeen and Nashville Railroad Company, Laws 1882, sec. 8, p. 1009.

LEGISLATION ON SAME SUBJECT MATTER IN 1884.

In the following charters granted in the succeeding session of 1884, the language of section 8 of the charter of the Yazoo and Mississippi Valley Railroad Company was followed with the significant exception that the final clause relating to taxation by cities and towns was struck out.

Mississippi River and Deer Creek Railroad Company, Laws 1884, sec. 3, p. 919.

Memphis, Oxford and Columbus Railway Company, Laws 1884, sec. 3, p. 920.

Terry, Brandon and Northeastern Railroad Company, Laws 1884, sec. 3, p. 937.

Helena, Memphis and New Orleans Railroad Company, Laws 1884, sec. 3, p. 938.

Arkansas City, Winona and Eastern Railroad Company, Laws 1884, sec. 3, p. 971.

D.

REFERENCES TO SOME PORTIONS OF CONSTITUTION AND LEGISLATION OF MISSISSIPPI RESPECTING MUNICIPAL TAXATION.

CONSTITUTION, 1890, SECTION 192. Provision shall be made by general laws whereby cities and towns may be authorized to aid and encourage the establishment of manufactories, gas-works, water-works, and other enterprises of public utility other than railroads, within the limits of said cities or towns, by exempting all property used for such purposes, from *municipal taxation* for a period not longer than ten years.

ANNOTATED CODE 1892, SEC. 2956 (Powers of Mayors and Aldermen of Cities and Towns):

Thirty-first.—To aid and encourage the establishment of manufactories, gas-works, water-works, and other enterprises of public utility other than railroads, within the corporate limits, by exempting all property used for such purposes from *municipal taxation* for a period not longer than ten years.

REVENUE LAW OF 1890.

(*Laws 1890, c. 2, p. 9.*)

SECTION 1. * * * Cities and towns are prohibited from levying or collecting any other tax on banks or on solvent credits owned by individuals or corporations, greater than 75 per cent. on the State tax.

SEC. 3 (p. 11). That the State tax for the year 1890 is hereby fixed and levied at three and one-half mills on the dollar, and for the year 1891 three mills for general purposes. * * *

E.

REFERENCES TO SOME STATUTES OF MISSISSIPPI, PRIOR TO 1869, RESERVING POWER TO TAX CORPORATIONS.

The legislature expressly reserved power to impose taxes in the following charters:

1833. Commercial and Rail Road Bank of Vicksburg (Laws 1833, p. 129).
1836. Commercial Bank of Rodney (Laws 1836, p. 137).
" Commercial Bank of Manchester (*id.*, p. 142).
" Commercial Bank of Columbus (*id.*, p. 152).
" Tombigbie Rail Road Company (*id.*, p. 227).
" Aberdeen and Pontotoc Railroad and Banking Company (*id.*, p. 241).
" Tallahatchie Rail Road Company (*id.*, p. 283).

In the following instances the charters provided that the capital stock of the respective corporations should "from time to time, as the Legislature may hereafter direct, be subject to be taxed annually." * * *

1833. Grand Gulf Rail Road and Banking Company (Laws 1833, p. 147).
1836. Mississippi and Alabama Rail Road Company (Laws 1836, p. 165).
" Lake Washington and Deer Creek Rail Road and Banking Company (*id.*, p. 215).

The following acts expressed in varying language the same reservation of power to the legislature.

1833. Protection Insurance Company (Laws 1833, p. 84).
" West Feliciana Rail Road Company (*id.*, p. 153).
1836. Gainsville and Narkeetah Rail Road Company (Laws 1836, p. 86).
" Mississippi Springs Rail Road Company (*id.*, p. 296).
1850. Yazoo and Houston Rail Road Company (Laws 1850, p. 352).
1859. Warren Insurance Company (Laws 1859, p. 122).
1862. Columbus Life and General Insurance Company (Laws 1862, p. 295).

In the following charters the legislature expressly declared that the property of the respective corporations should be "subject" or "liable" to taxation:

1836. Commercial Bank of Natchez (Laws 1836, p. 252).
1852. Columbus Life and General Insurance Company (Laws 1852, p. 199).
1854. Memphis and Charleston Railroad Company (Laws 1854, p. 86).
1865. Hernando Mutual Insurance Company (Laws 1865, p. 314).
" Pearl River Manufacturing Company (*id.*, p. 381).

The legislature of 1866–67 (the last session held before the adoption of the Constitution of 1869) in the charter of the Memphis, Holly Springs and Mobile Railroad Company expressly reserved to the state the power to levy income taxes upon the travel on the railroad (Laws 1866–67, p. 637), and reserved the same power in respect to the New Orleans, Mobile and Chattanooga Railroad Company (*id.*, p. 344). In the cases of the Bradford Machinery Company (*id.*, p. 473) and the Hashuqua Manufacturing Company (*id.*, p. 712) provisions were inserted declaring that the property and effects of the companies should remain liable to taxation.

F.

Statutes distinguishing city taxation from state and county taxation.

In the following statutes the legislature of Mississippi expressly exempted, or authorized the exemption of, corporations from city taxation:

1870. Jackson Street Railway (Laws 1870, p. 560).
1873. Natchez Street Railway (Laws 1873, p. 346).
1874. Corinth Street Railway (Laws 1874, p. 236).
" Pass Christian Street Railway (*id.*, p. 196).

1878. Brandon Street Railroad Company (Laws 1878, p. 487).
1882. Pass Christian City Railroad Company (Laws 1882, p. 821).
" City Railroad of Columbus (*id.*, p. 824).
1884. Mississippi State Fair Association (Laws 1884, p. 829).
" West Point Street Railway Company (*id.*, p. 944).
" Front and Asylum Street Railway Company (*id.*, p. 956).
1886. Hill City Street Railway Company (Laws 1886, p. 235).

In the following instances the exemption was from state and county taxation, leaving the corporations subject to city taxation:

1871. Levee Board, District No. 1 (Laws 1871, p. 54).
" Sardis Agricultural and Mechanical Society (*id.*, p. 636).
1884. Helena, Memphis and New Orleans Railroad (Laws 1884, p. 938).
1886. Cooper Normal College (Laws 1886, p. 727).
1888. Montrose High School (Laws 1888, p. 636).
1890. Harper's Baptist College (Laws 1890, p. 564).
" Pleasant Hill High School (*id.*, p. 570).
" Bellefontaine High School (*id.*, p. 574).

In the following acts exemptions were granted from county and municipal taxes:

1888. Deasonville High School (Laws 1888, p. 628).
" Enterprise Street Railway Company (*id.*, p. 518).
" Liberty Male and Female College (*id.*, p. 631).
1890. Pickens High School (Laws 1890, p. 561).
" Saltillo High School (*id.*, p. 577).
" Starkville Street Railway Company (*id.*, p. 660).

The legislature of 1888 saw fit to exempt a hotel in Natchez from payment of county taxes only (Laws 1888, p. 614).

G.

CHARTERS GRANTING EXEMPTIONS FROM TAXATION BETWEEN 1869 AND 1890.

1870. Whitworth Female College, Laws 1870, pp. 380, 381.
" Macon Male School, Laws 1870, pp. 401, 402.
" Attala County Agricultural and Mechanical Association, Laws 1870, pp. 457, 459.
1873. Educational Society of South Mississippi and East Louisiana, Laws 1873, pp. 429, 433.
" Baldwyn Female College, Laws 1873, p. 435.
" University of Columbus, Laws 1873, pp. 438, 439.
" Plowman and Agricultural Society, Laws 1873, p. 462.

1874. Abbeville Female College, Laws 1874, p. 158.
1877. Manufacturing Companies, Laws 1877, p. 72.
1878. Port Gibson, Utica and Crystal Springs Railroad Company, Laws 1878, pp. 463, 472.
" Brandon Street Railroad Company, Laws 1878, pp. 484, 487.
1880. All railroads while in process of construction, Laws 1880, pp. 19, 86.
" Lea Female College, Laws 1880, pp. 291, 293.
" Meridian and Aberdeen Fair Grounds, Laws 1880, p. 633.
1882. Purchasers of railroads at foreclosure, on incorporation, Laws 1882, pp. 47, 48.
" Delta Land and Manufacturing Company, Laws 1882, pp. 533, 537.
" Mississippi Improvement and Manufacturing Company, etc., Laws 1882, pp. 545, 550.
" Mississippi Mining, Milling, etc., Company, Laws 1882, pp. 555, 558.
" Star Mining, Milling and Manufacturing Company, Laws 1882, pp. 55[illegible] 561.
" Marshall Mills, La[illegible] 1882, pp. 561, 564.
" D. Mayer Agricultural and Manufacturing Company, Laws 1882, pp. 564, 565.
" Hope Oil Mill, etc., Company, Laws 1882, pp. 570, 573.
" Warren Cotton Mills Company, Laws 1882, pp. 587, 588.
" Luxapalila Manufacturing and Mining Company, Laws 1882, pp. 588, 591.
" Cooper's Wells Company, Laws 1882, pp. 599, 602.
" Meridian Mills, Laws 1882, pp. 606, 608.
" Blue Mountain Academy, Laws 1882, pp. 667, 668.
" Louisville Male and Female Seminary, Laws 1882, p. 670.
" Palo Alto Academy, Laws 1882, pp. 675, 676.
" Yazoo and Mississippi Valley Railroad Company, Laws 1882, pp. 838, 847.
" Memphis and New Orleans Railroad and Levee Company, Laws 1882, pp. 874, 883.
" Canton, Aberdeen and Nashville Railroad Company, Laws 1882, pp. 1001, 1009.
" Memphis, Selma and Brunswick Railroad Company, Laws 1882, p. 1022.
" Gulf and Ship Island Railroad Company, Laws 1882, pp. 849, 861.
" Birmingham and North-Western Railroad Company, Laws 1882, pp. 1040, 1049.

1882. Tennessee and Mississippi Rivers Railroad Company, Laws 1882, pp. 989, 1000.
" Vicksburg and North-Eastern Railroad Company, Laws 1882, pp. 1015, 1018.
" Meridian, Brookhaven and Natchez Railroad Company, Laws 1882, pp. 1049, 1064.
" Helena, Sardis, Pontotoc and Birmingham Railroad Company, Laws 1882, pp. 885, 895.
" Mississippi Mexican Gulf Railroad Company, Laws 1882, pp. 961, 974.
" Alabama and Mississippi Railroad Company, Laws 1882, pp. 863, 870.
" Mississippi and Arkansaw Railroad Company, Laws 1882, pp. 933, 942.
" Meridian, Winona and Helena Railroad Company, Laws 1882, pp. 943, 959.
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" Pass Christian City Railroad Company, Laws 1882, pp. 818, 821.
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1884. Mississippi State Fair Association, Laws 1884, pp. 827, 829.
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" Maury Institute, Laws 1884, pp. 880, 881.
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" Caledonia Branch Railroad Company, Laws 1884, pp. 888, 895.
" Warrior Coal Fields Railroad Company, Laws 1884, pp. 895, 901.
" Tombigbee Railroad Company, Laws 1884, pp. 901, 907.
" Moss Point, Scranton and East Pascagoula Railroad Company, Laws 1884, pp. 911, 915.
" Macon and Tuscaloosa Railroad Company, Laws 1884, pp. 915, 916.
" Mississippi River and Deer Creek Railroad Company, Laws 1884, p. 918.
" Memphis, Oxford and Columbus Railway Company, Laws 1884, pp. 919, 920.
" Port Gibson & Alabama Railroad Company, Laws 1884, pp. 922, 934.

1884. Terry, Brandon and Northeastern Railroad Company, Laws 1884, pp. 936, 937.
" Helena, Memphis and New Orleans Railroad Company, Laws 1884, pp. 937, 938.
" West Point Street Railway Company, Laws 1884, pp. 941, 944.
" Tombigbee and Grand Trunk Railroad Company, Laws 1884, p. 950.
" Natchez and Mobile Railroad Company, Laws 1884, pp. 951, 953.
" Front and Asylum Street Railway Company, Laws 1884, pp. 955, 956.
" Mississippi River and Mexican Gulf Railroad Company, Laws 1884, pp. 957, 963.
" Rodney, Jackson and Tuscaloosa Railroad Company, Laws 1884, pp. 968, 969.
" Arkansas City, Winona and Eastern Railway Company, Laws 1884, pp. 969, 971.
" Mississippi River and Eastern Railroad Company, Laws 1884, pp. 975, 986.
" Tallahatchie Valley Railroad Company, Laws 1884, pp. 987, 992.
" New Orleans and Northwestern Railway Company, Laws 1884, pp. 994, 1004.
" Meridian and Brunswick Railroad Company, Laws 1884, pp. 1005, 1013.
" Helena, Water Valley, Aberdeen and Birmingham Railroad Company, Laws 1884, pp. 1014, 1023.
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" Memphis, Birmingham and Atlantic Railroad Company, Laws 1886, pp. 203, 207.
" Pensacola and Memphis Railroad Company of Mississippi, Laws 1886, pp. 209, 221.
" Vicksburg, Yazoo-Delta and North Eastern Railway Company, Laws 1886, pp. 222, 227.
" Hill City Street Railway Company, Laws 1886, pp. 232, 235.
" Mississippi and Louisiana Bridge and Railroad Company, of Natchez, Mississippi, Laws 1886, pp. 237, 244.
" Port Gibson Female College, Laws 1886, p. 634.
" Cooper Normal College, Laws 1886, pp. 726, 727.
" Pittsboro Male and Female College, Laws 1886, pp. 734, 735.
1888. Macon, Tuscaloosa and Birmingham Railroad Company, Laws 1888, pp. 490, 499.

1888. Helena, Tupelo and Decatur Railroad Company, Laws 1888, pp. 500, 508.
" Brookhaven, Columbia and Mobile Railroad Company, Laws 1888, pp. 508, 509.
" Enterprise Street Railway Company, Laws 1888, p. 518.
" Vicksburg Electric Street Railway Company, Laws 1888, pp. 522, 523.
" Mississippi and Gulf Railroad Company, Laws 1888, pp. 542, 546.
" Mississippi Southern Railway Company, Laws 1888, pp. 548, 557.
" Columbus, Fulton and Eastport Railroad Company, Laws 1888, pp. 558, 563.
" Greenville and Durant Railroad Company, Laws 1888, pp. 563, 569.
" Waynesboro, Pascagoula and Gulf Coast Railroad Company, Laws 1888, pp. 570, 575.
" Greenville, Egypt Ridge and Bogue Phaliah Railway Company, Laws 1888, pp. 584, 591.
" Meridian Cotton Mills, Laws 1888, pp. 595, 596.
" Natchez Hotel, Laws 1888, p. 614.
" Deasonville High School, Laws 1888, p. 628.
" Liberty Male and Female College, Laws 1888, pp. 630, 631.
" Tombigbee Normal Institute, Laws 1888, p. 632.
" Montrose High School, Laws 1888, pp. 635, 636.
" Gulf Port Dental College, Laws 1888, p. 638.
" Mt. Carmel Normal College, Laws 1888, pp. 639, 640.
1890. Millsaps College, Laws 1890, pp. 553, 555.
" Pickens High School, Laws 1890, p. 561.
" Harper's Baptist College, Laws 1890, pp. 563, 564.
" Pleasant Hill High School, Laws 1890, pp. 569, 570.
" Hebron High School, Laws 1890, pp. 570, 571.
" Bellefontaine Male and Female High School, Laws 1890, p. 574.
" Saltillo High School, Laws 1890, p. 577.
" Waynesboro Normal Institute and College, Laws 1890, pp. 581, 582.
" Old Myrtle Normal College, Laws 1890, pp. 583, 584.
" Starkville Street Railway Company, Laws 1890, pp. 655, 660.
" Nashville and Mississippi Delta Railroad Company, Laws 1890, pp. 682, 687.
" Mississippi River, Alabama and Chattanooga Railroad Company, Laws 1890, pp. 703, 713.

1890. Greenville, Nashville and Chattanooga Railway Company, Laws 1890, pp. 732, 741.

" Columbus and Fulton Railroad Company, Laws 1890, pp. 743, 751.

" Alabama, Mississippi and Western Railroad Company, Laws 1890, pp. 751, 756.

" South Mississippi Railroad Company, Laws 1890, pp. 759, 767.

" Yazoo Delta Central Railway Company, Laws 1890, pp. 769, 778.

H.

Constitution of 1869, as to county taxes.

Article xii.

Sec. 16. No county shall be denied the right to raise, by special tax, money sufficient to pay for the building and repairing of court houses, jails, bridges, and other necessary conveniences for the people of the county; and money thus collected shall never be appropriated for any other purpose; *Provided*, The tax thus levied shall be a certain per cent. on all *tax* levied by the State.

No. 934. 80

Reply Brf. of Guthrie, Mayes, Gale,

MISSISSIPPI TAX CASES.

Fentress & Dickenson for P. E.

Office Supreme Court U.S.
FILED
APR 16 1900
JAMES H. McKENNEY
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed April 16, 1900.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,

vs.

WIRT ADAMS, State Revenue Agent.

In error to the Supreme Court of the State of Mississippi.

REPLY BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

WILLIAM D. GUTHRIE,
EDWARD MAYES,
NOEL GALE,
For Plaintiffs in error.

JAMES FENTRESS,
J. M. DICKINSON,
Of counsel.

WASHINGTON, April 12, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 324.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,

vs.

WIRT ADAMS, State Revenue Agent.

In error to the Supreme Court of the State of Mississippi.

REPLY BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

I.

Under the heading of "subsequent laws," the defendant in error in his brief concedes as follows (p. 5):

> "The laws under which the revenue agent is proceeding in this case are sections 3875–3886 of the Code of 1892 and the revenue agent act of 1894, in Laws of 1894, pp. 29–31."

In view of this concession, how can it possibly be doubted that recovery under these laws of 1892 and 1894 is an impairment by virtue of subsequent legislation of the charter exemption granted in 1882? The case is very much stronger in this respect than *Yazoo Railroad Co.* v. *Thomas*, 132 U. S. 174, and *Houston & Texas Central Railroad* v. *Texas*, decided at this term. Besides, the taxes sued on are indisputably levied under laws passed since 1882.

II.

The questions arising under the present writ of error will, it is assumed, be decided upon this record and not upon what is established in other cases. Any attempt to draw the facts in No. 244 into this case should be

unavailing. Besides, the municipal taxes here in question were not involved in that case, although other municipal taxes may have been, nor was this provision of the Yazoo Company's charter in any sense presented or involved in that litigation. It is, therefore, difficult to understand the point of the suggestion of the defendant in error that the decision in No. 244 constitutes *res adjudicata*.

Indeed, this suggestion must have been inadvertently made. Any municipal taxes involved in No. 244 related entirely to the road of the Louisville, New Orleans and Texas Railway Company, and in no respect to the road of the Yazoo Company. The right or privilege of appropriation claimed in No. 244 concerns the road of the L., N. O. & T. Company and is entirely distinct and separate from the exemption contained in the Yazoo charter, which affects solely the road of the Yazoo Company. The railroad companies in No. 244 did not contend and have never pretended that under the consolidation of 1892 the exemption in the Yazoo charter expanded so as to cover and include within its scope the roads of the other constituent companies. No such point could possibly have been made in view of the wording of the Yazoo charter, which provides as follows (see appendix, p. ii):

> "The consolidated company shall have and enjoy all the property, rights, privileges, powers, liberties and immunities and franchises herein granted; *but such consolidation shall not have the effect of exempting from taxation the railroad or property owned by such other consolidating company prior to its consolidation with the company hereby chartered.*

III.

A reference to the opinions delivered by Whitfield, J., in the state court (record, pp. 7–9, 43–44), will show conclusively that the court below decided neither that the exemption in the Yazoo charter had been repealed nor

that the consolidation created a new corporation which was not entitled to receive the exemption. It was assumed that the exemption continued "in full force and effect" by virtue of the constitution of 1890. But, as these points are now urged by the defendant in error, we may briefly consider them.

The court will observe that the defendant in error stands upon the decision in the *Mississippi Mills* case when needed to help his argument and to establish that the exemption was repealable, but casts it aside whenever it helps the railroad company. If the *Mississippi Mills* case is to be taken as sound, notwithstanding that it has been expressly overruled in No. 244, it would then conclusively follow that the legislature had power under the constitution of 1869 to grant repealable exemptions, and that, as the Yazoo exemption was not repealed, there must be, without further argument, a reversal of the judgment below in respect of the taxes from 1886 to 1892, inclusive, which accrued prior to the consolidation, but which were nevertheless included in the judgment below.

The defendant's plea on the question of repeal is as follows (record, p. 22):

> "And the said defendant further avers that the said exemption by said charter conferred has never been repealed by the legislature of said State, but, on the contrary, at the sessions of said legislature held in the years 1886, 1888, 1890, and 1896 respectively members of that body introduced bills therein whereby said exemption should be repealed, but said legislatures each and respectively refused to pass the same or any of them, and said charter exemption still stands unrepealed and not in any way modified by said State legislature."

This plea was demurred to by the state revenue agent, plaintiff below (*id.* p. 23), and the demurrer was sustained by the court (*id.* p. 24). Subsequently, the parties stipulated as follows (*id.* p. 42):

"First. That the appellee in the court below demurred generally to the second plea of the appellant, and that the court sustained such demurrer, and an order was duly entered to that effect, which should appear in the transcript, and that this order shall be considered as in the transcript."

This plea was overruled because it was held that the exemption as to municipal taxes was conditional upon the completion of the road to the Mississippi river, and had never been earned by fulfilling that condition, and not upon any idea that the exemption had been repealed.

It is difficult to answer a statement that the exemption was "repealed by the laws of 1882 and Code of 1892" (defendant's brief, p. 5), followed by a reference (p. 8) to numerous other statutes, none of which is quoted as required by the rule. If this point was made below, the court overruled it, for if this exemption had been clearly repealed, and it had been so held by the same court in No. 244 on this calendar, of course there would have been no necessity to consider the case on the merits and interpret the statute. To urge at this time that the decision of the state court that a contract has been repealed is conclusive upon this court in a contract case, and precludes argument, should try the patience of a court which at every term, and with great labor, is compelled to reiterate that "it is its duty to determine for itself the existence, construction and validity of the alleged contract, and also to determine whether, as construed by this court, it has been impaired by any subsequent state legislation to which effect has been given by the court below."[1]

As to the effect of the agreement of consolidation, it is proper to emphasize the fact that the agreement is not in this record, and that the consolidation was not men-

[1] Mr. Justice Peckham in *Houston & Texas Central Railroad* v. *Texas* at this term.

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tioned as a ground of decision by the court below. The revenue agent saw fit below to refrain from bringing before the court the agreement of consolidation. The reason is obvious. He wanted the advantage of recovering upon a theory which would render the railroad company liable for back taxes for the seven years prior to the consolidation. The original declaration in the case at bar was filed July 7, 1897 (record, pp. 1–4), and sought to recover back taxes for the years 1893, 1894, 1895 and 1896. The amended declaration was filed February 9, 1898, and presented additional claims for the taxes for the years 1886 to 1892, both inclusive, and for the year 1897 (*id.*, pp. 11–16). The action was thus for taxes for twelve years, seven of which accrued prior to the merger or consolidation which took place on October 25, 1892 (*id.*, p. 17). The only allegations in the case as to consolidation are to be found in the pleas of the railroad company (*id.*, pp. 17, 18), and they tend to show a mere merger and transfer without the creation of a new corporation. Indeed, the record indicates most persuasively that there was no claim below that the consolidation had created a new corporation, for in the "agreed statement of facts," which is binding here as well as below, the following language is used (*id.*, p. 20):

> "It is agreed between the respective parties to the above cause that *the defendant*, The Yazoo & Mississippi Valley Railroad Company, was chartered in the year 1882 under the laws of the State of Mississippi," etc.

If it had been intended to insist upon any limitation or extinction of the charter rights caused by the consolidation of 1892, different language would surely have been used than can be found in this record; but the state revenue agent saw fit and elected—and this after a litigation of nearly one year and after a decision on the merits in his favor by the highest court—to rest his case upon

the charter of 1882 and its interpretation alone. It does not now lie with him, under well-settled rules, to assert that under the consolidation agreement, which he deliberately elected not to prove, a new corporation was created. And no presumption exists that such was the fact. It is well settled that a consolidation might be effected which would constitute merely a merger, and not result in the death or dissolution of the Yazoo Company. In view of the peculiar wording of the pleadings and agreed statement of facts in this case, as framed by the consent and action of the state revenue agent in demurring to the plea, there is nothing before the court tending to establish that the consolidation of 1892 resulted in the creation of a new corporation.

IV.

If, nevertheless, it can fairly be said that the interpretation and effect of the consolidation agreement of 1892 are before the court in this case, it is then submitted that the exemption in the Yazoo Company's charter passed to the consolidated company, and that, even if a new corporation resulted from the consolidation, the exemption was continued by virtue of section 181 of the constitution of 1890, subject, however, to repeal by the legislature. The intention of the constitution was to continue existing exemptions "in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature." In this respect we find the radical difference between this case and the constitution of Missouri involved in the case of *Keokuk & Western Railroad* v. *Missouri*, 152 U. S. 301, for there was no clause in that constitution declaring that existing exemptions should "remain in full force and effect" until repealed

by the legislature. As matter of fact, the legislature of Mississippi has repeatedly declined to repeal these exemptions, which fact was distinctly pleaded (record, p. 22).

The charter of the Yazoo Company confers the authority to consolidate in the following language (see appendix, p. ii):

> "Said company may consolidate with any other railroad company in or out of the State of Mississippi upon such terms as the consolidating companies may agree upon; and it may lease its railroads and all its property and franchises, rights, powers, privileges and immunities then owned or thereafter to be acquired, or lease other railroads in or out of this State, for a term of years or in perpetuity, and upon any such consolidation, the consolidated company shall have and enjoy all the property, rights, privileges, powers, liberties and immunities and franchises herein granted; but such consolidation shall not have the effect of exempting from taxation the railroad or property owned by such other consolidating company prior to its consolidation with the company hereby chartered; nor of exempting from taxation any property which the consolidated company may, after such consolidation acquire under the provisions of the charter of such other consolidating company."

There can be no reasonable doubt from this language that it was clearly the intention of the legislature to include the exemption from taxation in the provision that "the consolidated company shall have and enjoy all the property, rights, privileges, powers, liberties and immunities and franchises herein granted." Otherwise, there would have been no sense in the two clauses which limited the exemption from taxation to the original company's property.

In view of this language of the statute and of the evident intention of the legislature that all the rights, privileges, liberties and immunities of the Yazoo Company, including the exemption, should pass to and vest in the consolidated company, there can be no doubt that the case

of *Tennessee* v. *Whitworth*, 117 U. S. 139, 145, is exactly in point. In that case Chief Justice Waite said:

> "As early as 1850, before either the charter of the Tennessee and Alabama Company or that of the Central Southern Company was granted, this court said in *Philadelphia, Wilmington & Baltimore Railroad Co.* v. *Maryland*, 10 How. 376, 393, speaking by Mr. Chief Justice Taney, that a statute which authorized the union of two railroad companies, and secured to the united company the 'property, rights and privileges which that law, or other laws, conferred on them [the separate companies], or either of them,' extended to the united company an exemption from taxation in the charter of one of the uniting companies, and this although it was at the same time said that 'the taxing power of a State is never presumed to be relinquished, unless the intention to relinquish is declared in clear and unambiguous terms.' This has been expressly reaffirmed in *Tomlinson* v. *Branch*, 15 Wall. 460; *Humphrey* v. *Pegues*, 16 Wall. 244; *Southwestern Railroad* v. *Georgia*, 92 U. S. 676; and the correctness of the decision was recognized in *Central Railroad & Banking Co.* v. *Georgia*, 92 U. S. 665; *Morgan* v. *Louisiana*, 93 U. S. 217; *Railroad Companies* v. *Gaines*, 97 U. S. 697, 711; *Railroad Co.* v. *Georgia*, 98 U. S. 359, 360; *Railroad Co.* v. *Hamblen*, 102 U. S. 273, 277; *Railroad Co.* v. *Commissioners*, 103 U. S. 1, 4; *Wilson* v. *Gaines*, 103 U. S. 417; *Louisville & Nashville Railroad Co.* v. *Palmes*, 109 U. S. 244, 253; and *Chesapeake & Ohio Railroad Co.* v. *Miller*, 114 U. S. 176, 185.
>
> "From this it is clear that, under the settled rule of decision in this court, the exemption from taxation, which was one of the 'rights and privileges' of the Nashville and Chattanooga Company, formed part of the charters of the Tennessee and Alabama Company and the Central Southern Company, unless a different rule is to be applied in Tennessee, because of a supposed limitation on the popular meaning of the words 'rights,' 'powers' and 'privileges' when used in statutes, on account of a peculiar provision of the constitution of that State."

And this authority was not overruled by *Keokuk & Western Railroad* v. *Missouri*, 152 U. S. 301.

Morever, the consolidation in the case at bar did not result in the creation of a new company, for that was not the intention of the parties, and such a conclusion would

be in direct conflict with the language used in the consolidation agreement.

If, nevertheless, it can be said that the consolidation of 1892, under the circumstances, created an entirely new corporation, it remains to be considered whether that new company would be entitled to receive the exemption which was enjoyed by the original Yazoo Company as to its property. It is submitted that the new company would be authorized to enjoy the exemption.

When the consolidation took place, the Yazoo Company was entitled to a perpetual exemption as to municipal taxes. If the constitution had sanctioned exemptions in the future, so that such an exemption as was granted to the Yazoo Company in 1882 could have been likewise granted under the constitution of 1890, there would be no reasonable doubt that the new corporation would be entitled to enjoy the existing exemption. It is only an absolutely inconsistent intervening constitutional provision that would prevent the immunity from passing to the new company within the doctrine of the *Keokuk* case.

Now, the framers of the constitution of 1890 had these exemptions in mind, and expressly preserved them in section 181, subject, however, to the condition that they should be repealable by the legislature. The framers also knew that these corporations had been authorized to consolidate upon terms which would transfer and carry to the consolidated company the immunity from municipal taxes contained in the Yazoo charter. They declared that that exemption "shall remain in full force and effect" until repealed. We should read this provision into the agreement of consolidation, and thus preserve what the framers of the constitution so clearly intended to protect. In other words, the effect of the constitution of 1890 was

substantially this and no more, namely, that any new corporation organized by consolidation after the adoption of that constitution would have to take existing irrepealable exemptions subject to their being repealed by the legislature. When the consolidation of 1892 was effected, if it created a new corporation, the new corporation took the immunity subject to repeal, although not subject to repeal if no consolidation had been had. If the new constitution, as in the constitution of Missouri in the *Keokuk* case, had expressly provided that there should be no exemptions, then the pre-existing exemptions in the Yazoo charter could not have been transferred to a new company. Had there been, in the *Keokuk* case, an express reservation of existing exemptions and a declaration that they should "remain in full force and effect," coupled with an existing express power to consolidate and transfer the exemption, it cannot be doubted that the conclusion then would have been that the new company was entitled to the benefit of the pre-existing exemption, subject to any conditions contained in the new constitution. This interpretation of the constitution of 1890 is in all probability the true intention of the framers and the reason for the peculiar language used, which, of course, must be considered in connection with the existing statute providing, as we have seen, for the transfer of the exemption to the consolidated company.

Washington, April 12, 1900.

WILLIAM D. GUTHRIE,
EDWARD MAYES,
NOEL GALE,
For plaintiffs in error.

JAMES FENTRESS,
J. M. DICKINSON,
Of counsel.

APPENDIX.

CONSTITUTION OF 1890.

Provision continuing exemption from taxation.

SECTION 181. The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals, but the legislature may provide for the taxation of banks and banking capital, by taxing the shares according to the value thereof (augmented by the accumulations, surplus, and unpaid dividends), exclusive of real estate, which shall be taxed as other real estate. Exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature. And domestic insurance companies shall not be required to pay a greater tax in the aggregate than is required to be paid by foreign insurance companies doing business in this state, except to the extent of the excess of their ad valorem tax over the privilege tax imposed upon such foreign companies; and the legislature may impose privilege taxes on building and loan associations in lieu of all other taxes except on their real estate.

CHARTER OF YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY.[1]

An Act incorporating the Yazoo and Mississippi Valley Railroad Company, and declaring its powers, approved February 17, 1882.

SEC. 5. *Be it further enacted*, That said company may, from time to time, mortgage or convey in trust any or all of its property, real, personal and mixed, of any and every description whatsoever, then owned or thereafter to be acquired, and also all or any of its rights, powers, privileges, liabilities, immunities and franchises whether then owned, possessed and enjoyed or thereafter to be acquired, including its rights to be a corporation; and under such deed or deeds of trust or mortgage secure, execute and dispose of the mortgage bonds of said company, to such amounts and maturing at such times and bearing such interest as it may deem best; said company may also execute a mortgage or mortgages and trusts as aforesaid, to secure bonds or obligations of other railroad companies, or may endorse the bonds of any other railroad company or com-

[1] Section 8 of the Yazoo Company's charter, containing the exemption, is printed at length in the main brief, pp. 1, 2.

panies; or in any other manner guarantee such bonds and secure the same by a mortgage or mortgages on its own property and franchises, then owned or thereafter to be acquired, as fully as it could do if the bonds were issued by it as aforesaid; said company may consolidate with any other railroad company in or out of the State of Mississippi upon such terms as the consolidating companies may agree upon; and it may lease its railroads and all its property and franchises, rights, powers, privileges and immunities then owned or thereafter to be acquired, or lease other railroads in or out of this State, for a term of years or in perpetuity, and upon any such consolidation, the consolidated company shall have and enjoy all the property, rights, privileges, powers, liberties and immunities and franchises herein granted; but such consolidation shall not have the effect of exempting from taxation the railroad or property owned by such other consolidating company prior to its consolidation with the company hereby chartered; nor of exempting from taxation any property which the consolidated company may, after such consolidation acquire under the provisions of the charter of such other consolidating company; and in case of a lease, the lease (lessee) shall, so far as the terms of the lease may allow, enjoy and possess all the property, rights, powers, privileges, liberties, immunities and franchises which the lessor had as to the leased premises; the said company is also authorized to do an express business over its own and other lines of railroad and steamboats or other conveyances in and out of this State; and to acquire or put up, use and operate a line or lines of telegraph in this and other State or States, and to acquire, hold and enjoy all such property as may be proper, necessary or convenient in doing the said express or telegraph business: *Provided*, that by such consolidation the maximum in section six applies only to roads hereafter built. Laws Mississippi, 1882, p. 842.

No. 324. So

Brief of Green for

Office Supreme Court U. S.
FILED
SEP 9 1899
JAMES H. McKENNEY,
Clerk.

Filed Sept. 9, 1899.

In the Supreme Court of the United States.

No. 324

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, PLAINTIFF IN ERROR,

versus

WIRT ADAMS, STATE REVENUE AGENT, DEFENDANT IN ERROR.

Error to the Supreme Court of Mississippi.

NOTICE, MOTION TO DISMISS OR AFFIRM AND BRIEF OF ARGUMENT.

MARCELLUS GREEN.
Attorney for Defendant in Error.

In the Supreme Court of the United States.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, ET ALS, PLAINTIFF IN ERROR,

VS.

WIRT ADAMS, STATE REVENUE AGENT, DEFENDANT IN ERROR.

Error from the Supreme Court of the State of Mississippi.

NOTICE OR MOTION TO DISMISS OR AFFIRM.

To Mr. Edward Mayes, Council for Plaintiff in Error:

You will please take notice that on Monday, October the 9th, 1899, at the opening of the court, or as soon thereafter as counsel can be heard, the motions of which the attached are copies, will be submitted to the Supreme Court of the United States, for the decision of said court thereon. Annexed hereto, also, is a copy of the brief of Argument to be submitted with the said motions in support thereof.

MARCELLUS GREEN,
Counsel for Defendant in Error,
for the purpose of these motions.

United States of America,
Circuit Court of the United States for the
Southern District of Mississippi.

Before me, L. B. Mosley, clerk of the said Circuit Court of the United States, for the Southern District of Mississippi, this day personally appeared Wirt Adams, the defendant in error in the

above styled cause, who being by me first duly sworn, on his oath says, that he this day served the foregoing notice with the annexed motion and brief of Argument, on Mr. Edward Mayes, the counsel of record for the plaintiffs in error, by delivering to him in hand and in person a true copy of said notice, motions and brief of Argument.

Sworn to and subscribed before me this ——day of ——— 1899, as witness my hand and seal of said Court.

——————— Clerk.

In the Supreme Court of the United States.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, PLANTIFFS IN ERROR,

vs.

WIRT ADAMS, STATE REVENUE AGENT, DEFENDANT IN ERROR.

Error from the Supreme Court of the State of Mississippi.

MOTION TO DISMISS OR AFFIRM.

Now comes the Defendant in Error, Wirt Adams, State Revenue Agent, by his counsel appearing in that behalf, and moves the court to dismiss the above entitled cause for want of jurisdiction in the Supreme Court of the United States to review the same. Because:

1. The judgment from which said appeal purports to have been taken is the judgment of the Supreme Court of one of the United States, to-wit: the Supreme Court of the State of Mississippi, and the record does not show that a Federal question was so directly involved that the State court could not have given judgment against Plaintiff in Error without deciding it.

2. Because no Federal question is involved in the case.

3. Because the pretended Federal question, was made up and plead after the opinion and judgment of the State court had settled the question of liability against the Plaintiff in Error.

And the said Defendant in Error, by counsel as aforesaid, also moves the court to affirm the said judgment from which

said appeal purports to have been taken, because, although the record in the case may show that this court has jurisdiction in the premises. Yet it is manifest that said appeal was taken for delay only.

MARCELLUS GREEN,
Counsel for Appellee for the purpose of these motions.

In the Supreme Court of the United States.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WIRT ADAMS, DEFENDANT IN ERROR.

Error from the Supreme Court of Mississippi.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR ON MOTION TO DISMISS OR AFFIRM.

STATEMENT.

This action was brought on the authority of the Yazoo & Mississippi Valley Railroad Company vs. Thomas, 65 Miss., 562, affirmed, 132 U. S. 174, to recover municipal taxes.

The question involved in this case is, whether the exemption granted by the Legislature of Mississippi, in section 8 of Appellant's charter, (Special Record, page 8,) was unconditional as to municipal taxes, or whether under the provisions of the charter the road had to be completed to the Mississippi river in order to earn the exemption, as had been held in the Thomas case supra, as to State taxes.

On a consideration of this question, on demurrer to the Revenue Agent's declaration the trial court held in its judgment that the exemption was perpetual and unconditional as to municipal taxes, and on this ground dismissed the suit.

(Special record, page 6.)

On appeal to the Supreme Court of the state, this ruling was assigned by the Revenue Agent for error, (Special Record page 7) and the Supreme Court reversed the judgment of the lower court, and held, as was contended by the Revenue Agent, that the exemption was conditional, and the case was remanded to be proceeded with in accord with that opinion.

(Special Record page 10.)

When the case came before the lower court for a second hearing, appellant filed four pleas :

1. The general issue.

2. That the road had been completed to the river by a consolidation with other railroads.

3. A release from taxation granted by the municipal authorities of the city of Jackson.

4. A lease from appellant to the Illinois Central Railroad Company, the granting of appellant's charter and the refusal of the legislature to repeal its exemption, and the overruling of the Cook case by the Supreme Court.

The plea of reaching the river by consolidation with other roads is manifestly without merit, as this could not have been within the meaning or purpose of the legislature.

As to the third plea :—The Municipal Authorities of the city of Jackson were wholly without authority of law to grant exemption, and such grant by them was in violation of the State Constitution, providing that taxation shall be equal and uniform.

Con. of Miss., 1869 Sec. 20, Art. 12, and section 112 Con. 1890.

The Court's ruling on this is upheld by all the authorities.

Dillon Mun. Cor. Vol. 2, Note 1, Sec. 781.

None of the facts set out in the 4th plea had any bearing upon the matter in controversy ; it was frivolous and could have no place in the case, except to attempt by going outside of the matter in dispute to raise a federal question and by an appeal to this court, delay the payment of taxes.

The second, third and fourth pleas were demurred to on the grounds above indicated, and the demurrers were sustained.

It is admitted in the agreed statement of fact (Special Record page 30), upon which the case went to trial under the general issue : that there had never been a manual construction of the road to the Mississippi River, that the road ran through the towns mentioned in the declaration and that the assessments and levies were properly made.

Judgment was rendered in the lower court on the second trial, for the State Revenue Agent, and on appeal, this judgment was affirmed by the Supreme Court, (Special Record page 35) and from that final judgment of the State court of last resort, this appeal is taken.

BRIEF.

The first ground in Appellant's Assignment of Error on this appeal, that certain Mississip pi legislation, prescribing the duties and defining the powers of the State Revenue Agent, is subsequent legislation to the granting of its charter and that it impairs its contract rights, gives no jurisdiction for two reasons, first: it is a question that was never presented to, and the State court had no opportunity to pass upon it.

Miller vs. Texas, 153 U. S., 535.
Morrison vs. Watson, 154 U. S., III.

The statute must be specially set up by the party and the decision must have been against the claim.

Montgomery vs. Harnandez, 12 Wheat, 129.

The right on which the party relies must have been called to the attention of the court below, in some way, and the decision of that court must have been against the right claimed.

Maxwell vs. Newbold, 18 How, 511.
Hayward vs. Denny, 158 U. S., 180.
Miller vs. Cornwall R. R. Co., 168 U. S., 131.
Union Mutual Ins. Co. vs. Kirchoff, 169 U. S., 103.

Second. This Legislation is purely remedial; an alteration in the States agency for the transaction of her business, it in no wise alters or attempts to alter or abridge any right or defence. Nor does it impair any contract right of appellant or of any person. The absurd contention is here made, that it is an impairment of contractual rights to appoint or change an agent for the collection of money due.

As to the second and third ground, the court will see, from the pleadings the facts and the opinion of the Supreme Court on the first and second trial, that this case simply involved a construction of a State statute unimpaired by any subsequent legislation.

"This court is bound by the decision of a State court in regard to the meaning of the Constitution and laws of its own State, and its decision upon such state of facts raises no Federal question."

Turner vs. Wilkes County, 173 U. S., 161.

On a writ of error to a State court, this court cannot take jurisdiction under the allegation that contract has been im-

paired by a decision of that court, when it appears that the State court has done nothing more than construe its own constitution and statutes, there being no subsequent legislation touching the subject.

Turner vs. Wilkes Co., 173 U. S., 161.

It has been repeatedly announced by this court: "That when we find it unnecessary to decide any Federal question, and when the state court has based its decision on a local or state question, our logical course is to dismiss the writ of error.'

Eutis v. Bolles, 150 U. S., 361.
Fort Smith R. R. Co., vs. Merriam, 156 U. S., 478.
Hamlin vs. Western Land Co., 147 U. S., 674.
Costells vs. McConnico, 168 U. S., 674.
Remington Paper Co. vs. Watson 173 U. S., 443.

The matter set out in the third ground of the assignment, as to whether or not the road was completed to the river confers no jurisdiction, it being wholly as to a question of fact.

Dower vs. Richards, 151 U. S., 658.
Egan vs. Hart, 165 U. S., 188.
Hedrick vs. Ry. Co., 167 U. S., 673.

As to the 4th and last ground of the assignment: No Federal question is involved when the Supreme Court of a state decides that a municipal corporation within the state has not power, under the constitution and laws of the state, to make the contract sued on.

Missouri &c. vs. Harris, 144 U. S., 210.

If, however, a federal question was presented, and the case decided upon on independent ground, broad enough to maintain the judgment, and not involving Federal law, this court will dismiss the writ of error without considering the Federal question.

Beatty vs. Benton, 135 U. S., 244.
Marrow vs. Brinkley, 129 U. S., 178.
Hale vs. Akers, 132 U. S., 554.
Eagan vs. Hart 165, U. S., 188.

On the ground that this court has no jurisdiction because no Federal question is involved or that the decision of the state court is based upon sufficient ground, independent of any Federal question, we ask that the writ of error be dismissed, or that the judgment be affirmed.

MARCELLUS GREEN.
Attorney for Defendant in Error.

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Brief of Green for D. & E.

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OCTOBER TERM, 1899.

No. 324.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL.,
Plaintiffs in error,

vs.

WIRT ADAMS, State Revenue Agent.
Defendant in error.

SUPPLEMENTAL BRIEF ON MOTION TO DISMISS, AND BRIEF ON THE MERITS, FOR DEFENDANT IN ERROR.

MARCELLUS GREEN,
Attorney for defendant in error.

Supreme Court of the United States.

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SUPPLEMENTAL BRIEF ON MOTION TO DISMISS, AND BRIEF ON THE MERITS, FOR DEFENDANT IN ERROR.

ON THE QUESTION OF JURISDICTION.

It is stated in brief of argument for plaintiff in error, in opposition to the motion to dismiss this appeal for want of jurisdiction in this court, that the third and fourth pleas to the declaration, "sets up the Federal question by alleging that under the charter, its property was exempt from municipal taxation; that the power to make such exemption had been judicially recognized and declared; and that such exemption was a part of the charter contract of the defendant, as between it and said state". That is true, and is all the material averments of these pleas, and they do not raise any question giving jurisdiction.

The Federal question, by which the motion

is sought to be defeated, is under the contract clause of Article 1, Section 10, of the Constitution of the United States, prohibiting the States from passing laws impairing the obligation of contracts.

The pleas set up the contract and the power to make it, but wholly fail to aver, or set up in any manner, that there was ever any law enacted subsequent to the act of incorporation, that impaired the charter.

On the other hand the fourth plea—the only one relied upon as presenting a Federal question, concludes with the distinct averment, that: "Said charter of exemption still stands *unimpaired and not in any way modified by said State Legislature*".

To give this court jurisdiction by writ of error to a State court, it must appear by *the record* that a Federal question was raised, and no where in the record is any subsequent legislation shown that impaired any charter right.

New York and New England R. R. Co. vs. Woodruff, 153 U. S., 689.

Kipley vs. Illinois, 170 U. S., 182.

Axley Stove Co. vs. Butler Co., 166 U. S., 648.

Levy vs. San Francisco, 167 U. S., 175.

Capital National Bank vs. Cadiz Bank, 172 U. S., 425.

Jurisdiction cannot arise from inference, but

only from averments so distinct and positive as to prove it beyond question that the party intended to assert a Federal right.

Kipley vs. Illinois, 170 U. S., 182.

Counsel for plaintiff in error, undertake to set up and *show in their brief* certain legislation, that *does not appear in the record* upon which they rely to raise the Federal question. This matter shown by their brief, being largely amendatory acts to various municipal charters, but which do not enlarge their previously existing taxing power, and so could not have been, with effect, pleaded or offered in evidence as impairing the charter obligation. In their effort to supply this deficiency, counsel seem to have overlooked the fact that under the rulings of this court: "Resort cannot be had to the expedient of imparting into the record the legislation of the State as judicially known to its courts, and holding the validity of such legislation to have been drawn in question, and a decision necessarily rendered thereon in arriving at conclusions upon matters actually presented and considered. A definite issue as to the validity of the statute or the possession of a right must be distinctly *deduceable from the record* before the State court can be held to have disposed of such Federal question by its decision".

Powell vs. Brunswick Co., 150 U. S., 433.

Louisville & Nashville Ry. Co. vs. Louisville, 166 U. S., 715.

This case only presents a controversy between citizens of the State, as to the construction of a State statute, unimpaired by subsequent laws, and this does not raise a Federal question.

Turner vs. Wilkes Co., 173 U. S., 161.

BRIEF ON THE MERITS.

The eighth section of the Act incorporating the Yazoo & Mississippi Valley Railroad Company is as follows: "Be it further enacted, that in order to encourage the investment of capital the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will or will not impose thereon, it is hereby declared that said company, *its stock, its railroads and appurtenances, and all its property in this State, necessary or incidental to the full exercise of all the powers granted, not to include compresses and oil mills, shall be exempt from taxation*, for a period of twenty years from the completion of said railroad to the Mississippi river, not to extend beyond twenty-five years from the date of this Act, and, *when the period of exemption herein provided shall have expired, the property of said railroad company shall be taxed at the same rate as other property in this State.* All of said taxes to which the property of said company may be subjected in this State, whether for

county or State, shall be collected by the treasurer of this State and paid into the treasury, to be dealt with as the legislature may direct; *but said company shall be exempt from taxation by cities and towns.*"

The question presented by this case, is: Did the legislature by the last paragraph of this section intend to grant plaintiffs in error unconditional exemption from taxation by cities and towns?

It has heretofore been held by this court that the exemption above provided, as to State and county taxes, was conditional on the road reaching the Mississippi river.

Y. & M. V. R. R. Co. vs. Thomas, 132 U. S., 187.

Affirming the opinion of the State court.

Y. & M. V. R. R. Co. vs. Thomas, 65 Miss., 553.

In the Thomas case, supra., this court held, "In our opinion it cannot be doubted that the principal object of the grant to the company was the building of a line across the State from the Chicago Railroad to the Mississippi river."

Section 2 of the charter, expressly provides that one of the lines of the road is to reach the Mississippi river at or near a point opposite Arkansas City, if practicable, yet the company without any pretense that the road was ever constructed according to the terms of the charter and

without showing that it undertook or accomplished any of the work set out and declared by the preamble of the act of incorporation, "to be of great importance and in strict accordance with the policy and interests of this State", and without showing that the State received any part of the consideration mentioned in the preamble and act; contend that under the provisions of the charter, it is granted unconditional and perpetual exemption from municipal taxation.

Under this construction the court is called upon to consider separately and alone the concluding paragraph of section 8. This cannot be done.

A statute will be construed according to its object and spirit, although against the letter.

Painter vs. Trotter, 10 S. & M. (Miss.) 537.

"In the construction of a statute, the object is to get at its spirit and meaning, its design and scope, and that construction will be justified which evidently embraces the meaning and carries out the object of the law, although it be against the letter and grammatical construction of the act".

Dixon vs. Dal. 1 S. & M. (Miss.) 70.

In determining the proper construction of a statute, the entire legislation on the same subject matter, its policy and reason, as well as the text of the particular act, must be looked to.

Clements vs. Anderson, 46 Miss., 598.

Taking a reasonable view of the charter and reading the whole act together, it would appear, that provisions having been made under section 8, for the collection of State and county taxes by the State treasurer, and these taxes having been thus specially mentioned; and as there might arise a doubt as to whether municipal taxes were covered by the exemption, on the doctrine that the mention of one would exclude the other, and to make certain in express terms that municipal taxes were included in the grant, the clause, "but said company shall be exempt from taxation by cities and towns" was added.

Not that the company should, without reason or consideration, have perpetual and unconditional exemption, as it contends, but that it should likewise, that is, upon the terms and conditions before made in the section, be exempt from municipal as well as other taxes.

The purpose of the legislature in granting the exemption was to induce the building of the road to the Mississippi river, as held by this court and the state court in the Thomas case. It was a bonus offered for undertaking the difficult task set out in the preamble.

It cannot be that it was the purpose of the legislature to relieve the corporation from any of the burdens of taxation without some object or reason, and the apparent object and reason of the exemption was to induce the company to build

the road to the river, not only to open up that section of the country, but to bring the river and the railroad into competition as common carriers.

An act must be construed according to its reason and object.

Love vs. Taylor, 4 Cush. (Miss.) 567.

Grand Gulf Bk. vs. Archer, 8 S. & M., (Miss.) 151.

There is nothing in the act that leads to the conclusion that it was ever in the mind of the legislature to grant a perpetual and unconditional exemption.

The act speaks of but the term not to exceed twenty-five years, to be earned upon the road being constructed to the Mississippi river. Any other construction would make the act inharmonious.

It provides in section 8, that: "*when the period of exemption herein provided shall have expired, the property of said railroad company shall be taxed at the same rate as other property in this State.*" Not that it shall then pay State and county taxes alone, but that it "shall be taxed at the *same rate* as other property". Not that after the period of exemption shall have expired it shall pay a part of the taxes, but that it shall then bear its full share of all the burdens of taxation, "as other property in the State."

Again, the act provides for the exemption of the company's "stocks, its railroads and appur-

tenances and all its property necessary or incidental to the full exercise of all the powers herein granted, not to include compresses and oil mills". And if the last paragraph of section 8 is to be treated and considered as independent of the rest of the section, by its provision that "said company shall be exempt from taxation by cities and towns," the exemption would not only be perpetual and unconditional as to property held for railroad purposes, but general, exempting not only "its stocks, its railroads and appurtenances and all its property necessary or incidental to the full exercise of all the powers granted", but it would apply to exempt from municipal taxation, its property of every kind and description, including compresses and oil mills, expressly made subject to taxation by the preceeding part of the same section, as well as its express business, telegraph lines, storage and wharfage, all of which several kinds of business it is empowered to engage in by the terms of its charter.

"Statutes or charters exempting property, persons or corporations from the common burdens of taxation, are to be strictly construed; the intention of the legislature to grant the immunity claimed must be clear beyond a reasonable doubt, and the State must be given the benefit of every doubt arising as to the legislative intent."

Hoge vs. Ry. Co., 99 U. S., 348.

"A claim of exemption from county and mu-

nicipal taxation cannot be supported any more than a claim for State taxation, except upon language so strong, as that, fairly interpreted, no room is left for controversy."

Bailey vs. Magwire, 22 Wall (U. S.) 215.

The fourth assignment of error, goes to the correctness of the court's ruling in holding that under the constitution and laws of Mississippi, the municipal authorities of the city of Jackson had no power to grant exemption from municipal taxation.

This exemption is in violation of Section 20, Art. 12, Constitution of Mississippi of 1869, (which was in force at the date of the municipal ordinance), providing that taxation shall be equal and uniform throughout the State.

Under this provision the board of mayor and aldermen had no power by exemption to produce and bring about any kind of inequality.

State vs. Hannibal Ry. Co., 75 Mo., 208.

Brewer Brick Co. vs. Brewer, 62 Mo., 62.

State vs. Taylor, 48 Conn., 145.

State vs. Gracey, 11 Nev., 223.

Mark vs. Jones, 21 N. H., 293.

Hayslett vs. Mt. Vernon, 33 Iowa, 229.

Section 192 of the constitution of Mississippi, 1890, provides: that provision shall be made by general laws whereby cities and towns may grant certain exemptions, but there was no such power under the constitution of 1869.

For a better presentation of all the questions involved in this case on the merits we submit to the consideration of the court the opinion of the State court upon the first and second appeal, which are to be found in the record.

Should the court see proper to consider this case upon the merits, we respectfully ask that the judgment of the State courts be affirmed.

MARCELLUS GREEN,
Attorney for defendant in error.

Fo. Rem. 80

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No. 324.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

WIRT ADAMS, STATE REVENUE AGENT, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF IN REPLY TO ARGUMENT OF OPPOSITE COUNSEL.

F. A. CRITZ,
R. C. BECKETT,
Of Counsel for Defendant in Error.

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Supreme Court of the United States.

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vs.

WIRT ADAMS, STATE REVENUE AGENT, DEFENDANT IN ERROR.

Reply of F. A. Critz and R. C. Beckett to Brief of Opposite Counsel on the Merits.

BRIEF.

This case involves only more pointedly and more distinctively one point involved in all of the preceding cases, Nos. 244, 318, 319, and 320, in that while those cases all involved the State, county, and municipal taxes, this case involves the municipal taxes alone.

It is not the same property involved in any of those suits. The property involved here is in the city of Jackson and

other towns, and before the consolidation of that company on October 25, 1892, with the Louisville, New Orleans and Texas Railway Company belonged to the *original* Yazoo and Mississippi Valley Railroad Company. Since that consolidation the property has belonged to the *consolidated* or present Yazoo and Mississippi Valley Railroad Company. Hence the principles governing the attempt to collect the taxes from 1886–1892 can only be treated in the nature or relation of principles by *stare decisis*, while *the things* necessary to decide as to the taxes of 1892–1898 may be regarded as *res adjudicata*, if properly before the court, in that view; otherwise they, too, would be *stare decisis*.

In the case No. 244, now pending here, the municipal taxes were sued for in conjunction with the State and county taxes.

Record in No. 244, pp. 81, 105, 617, 628.

As to points already argued by us in the previous cases, we will not reiterate, but refer to the pages of our briefs in those cases.

FIRST.

In said case No. 244, the supreme court of Mississippi, where the parties were substantially the same as here, decide that sections 13 and 20 of article 12 of the constitution of December 1, 1869, absolutely prohibited the grant of exemptions such as the one here, for, as above shown, that case also embraced municipal taxes. It would be difficult to add anything to the force of their opinion. It is in that Record No. 244, pp. 659–671.

SECOND.

That applies to all taxes from 1886–1898. The court also in that opinion decide that the consolidation of October, 1892, created a new company and no exemption passed into

it. (See their exhaustive opinion in Record No. 244, pp. 638–659, 686).

That applies to all taxes from 1892–1898.

THIRD.

In that opinion it is also decided that all exemptions were repealed by the Laws of 1886, page 23, and Code of 1892.

Record in No. 244, pp. 671–673, 686, 687.

Those constructions of the constitutions and laws of Mississippi are conclusive on this court, and it only remains to be seen whether they impair the obligation of any contract to exempt the property in controversy in Jackson and the other towns from municipal taxation for said years 1886–1898, and on this point we say:

FOURTH.

So far as any claim may be advanced that a collection of taxes here would violate section 1 of the fourteenth amendment, it is sufficient to say that for taxation for the years 1892–1898 the assessments were made by the regular assessing board, and there can be no color for any claim that this violates the fourteenth amendment, else it would be impossible ever to assess anything anywhere or at any time.

So far as the back taxes are concerned, that said assessment violates no provision of the fourteenth amendment is decided by the State supreme court in a case having substantially the same parties as here, and as the statute under which this assessment was made expressly provides for notice and a hearing, there could be no color for any claim of a violation of the fourteenth amendment. The State court in its opinion collates the cases in this court on that subject.

Opinion of the court in No. 9358, filed in No. 319 here.

Also, Y. & M. V. R. R. Co. *vs.* Adams, 73 Miss., 662, 663.

And so far as the overruling of its former opinions by the State court is concerned, this is a writ of error to the State court, which only lies on Federal questions, and this court has many times decided that such action by the State court presents no Federal question. The distinction is explained in Central Land Co. *vs.* Laidley, 159 U. S., 109–112, which seems to be now regarded by this court, from their uniform subsequent reference to it, as the leading case on that subject.

See also Hansford *vs.* Davis, 163 U. S., 278.

FIFTH.

As to the back taxes, the State court has also expressly decided that, the assessment being made on summons, notice, and a regular hearing, the action of the assessing board in determining the liability to taxation is a judicial function, and that the decision is *res adjudicata* and cannot be attacked collaterally, but only by certiorari, and they sustain this position by numerous authorities.

Opinion in No. 9358, on file in No. 319 here.

Also our brief on motion to dismiss in No. 318, pp. 43, 44.

And this court has decided that a decision of a State court as to whether a decision by one of its own tribunals is *res adjudicata* raises no Federal question.

N. Pac. R. R. Co. *vs.* Patterson, 154 U. S., 132–134.

The authorities on this point are collected in our briefs on the motions to dismiss in No. 318, p. 43; No. 320, p. 32, and our big brief on the merits in case No. 244, pp. 43, 44.

SIXTH.

As to Subsequent Laws.

The laws under which the revenue agent is proceeding in this case are sections 3875–3886 of the Code of 1892 and the revenue agent act of 1894, in Laws of 1894, pp. 29–31.

We do not think that under the later and well-considered opinions of this court that these can be justly regarded as subsequent laws, tending or having any tendency to impair a contract. (See our views and the decisions of this court in our brief on the motions to dismiss or affirm in No. 318, pp. 30–37, where the subject is fully discussed.)

SEVENTH.

The charter in the case at bar (see brief of opposite counsel, pp. 1, 2) was granted on February 17, 1882, after the decision in the case of Mississippi Mills *vs.* Cook (56, p. 40), holding all exemptions to be repealable, and hence the decision of the court above referred to, holding all exemptions repealed by the laws of 1882 and Code of 1892, could create no color of a Federal question. So far as innocent purchaser or back taxes are concerned, no Federal question is or can be raised. For our reasons and authorities see our brief on the motion to dismiss or affirm in No. 318, p. 37, and also our joint brief in the three cases Nos. 318, 319, and 320, pp. ——. 15=24

And in the late case of Houston & Texas Central Railroad Co. *vs.* The State of Texas, No. 81, decided March 26, 1900, this court, in their printed opinion in the clerk's office, on pages 23, 24, say that where anything forbidden by the Constitution is attempted, it is void and not merely voidable, and is not binding, and that was a litigation where past transactions, like back taxes, were attempted to be opened up.

We also call the attention of this court particularly to this case, in answer to the claims in No. 319 and 320 that the receipts when obtained from the sheriffs and tax collectors were an estoppel on the State. The distinction is that in the Texas case the warrants had actually been received, and this court on page 24 of that opinion say that if the warrants had been *unconstitutional* it would have been no payment, while here in said cases the officers refused to give the receipts.

EIGHTH.

So far as there being any special scheme of taxation amounting to a contract to collect in that particular way, we have shown in our brief on the motion to dismiss in No. 318, p. 38, that no one can have a vested right in the mode or manner of the collection of its taxes by the State where he has no additional or other taxes to pay, but the answer here is that there was no particular way or scheme to collect the town taxes. Opposite counsel refer to a Georgia case where, in a particular scheme of taxation, this court held, not that the property in controversy was exempt from taxation (see brief of opposite counsel on page 22), but that the statute provided no method of collecting the town taxes and hence they could not be collected in that suit. But we will show under the next head that a way was provided to collect town taxes here, and hence the Georgia case has no application for both of those reasons.

NINTH.

But if this court should see proper to take jurisdiction, you are bound either to follow your previous decisions and hold that under sections 13 and 20 of article 12 of the Mississippi constitution of December 1, 1869, the exemption claimed was void *ab initio*, as held in Louisville *vs.* Palmes, 109 U. S., 248; St. Louis, &c., *vs.* Berry, 113 U. S., 475;

Schurz *vs.* Cook, 148 U. S., 408, and Keokuk *vs.* Mo., 152 U. S., 303, 310–312, and many other cases cited by the State court in its opinion in said case No. 244 here, on page 662 of that record, or else you are bound to hold that it was a repealable exemption, as the Mississippi Mills case did establish in 1878, before this charter was granted in 1882, on a test case, the exact and identical point that the legislature could repeal exemptions granted after the adoption of the constitution of December 1, 1869.

Under the first holding that would end this case and affirm it.

Under the second holding the court would determine, independently and for itself, whether this exemption had been repealed, though for the life of us we cannot see where a Federal question would come in, even if the court should find that it had been repealed.

1st. It was clearly unconstitutional, for besides the reasons given by the State court in the opinion in No. 244, *supra*, these are municipal taxes, and section 14 of article 12 of the constitution of December 1, 1869, prohibits the legislature from authorizing counties or towns to lend their credit or subscribe to railroads. On this point see our brief on the motions to dismiss or affirm in No. 320 here, on pages 48–50.

Now, it has been decided both by the supreme court of Mississippi and by this court that this section and sections like it prohibited *donations* as well as subscriptions to capital stock.

N. O., &c., R. R. Co. *vs.* McDonald, 53 Miss., 240, 245.

The legislature could have authorized the city of Jackson to donate its bonds or the taxes for twenty years or any other legal consideration, but on the consent only of a majority of two-thirds of the qualified voters at an election.

Here the defendant, plaintiff in error here, pleaded that

the city of Jackson passed an ordinance releasing the road from taxation for twenty years, but that ordinance lacked the consent of any voters at any election, and it seems too plain for argument that if the legislature could not directly authorize the city of Jackson to grant the exemption without the consent of its voters they could not indirectly grant the exemption themselves. On this point see their brief, p. 3.

2d. The exemption was clearly repealed. It was granted February 17, 1882, and in 1884 the legislature, in an act amending the Code of 1880, by substitution, enacted sections 1 and 2 in lieu of sections 607 and 608 of the Code of 1880. Said sections provide for a privilege tax on railroads and re-enacted section 606 of the Code of 1880.

Now, section 606 of the Code of 1880 expressly provides that municipalities may tax railroads. In the Lambert case, in 70 Miss., it is expressly held that the Code of 1880 repealed all exemptions, and also by the court in No. 244. (See their opinions, pp. 671–673, 685, 686.)

In the revenue law of 1884 there is a provision reserving exemptions as to State and county taxes in section 2, but none whatever as to municipal taxes. (See Laws of 1884, pp. 29–31, sections 1 and 2.)

And neither in the "Laws of 1886," p. 23, nor the "Laws of 1890," pp. 12, 13, nor in the Code of 1892, nor since, is there the least pretense or effort to revive exemptions as to municipalities. Code of 1892 § 3880.

In fact, section 183 of the constitution of 1890 absolutely thereafter prohibits subscriptions or donations to railroads by cities and counties, and also section 192 of said constitution referred to by opposite counsel and copied in the Appendix "D," p. III, of their brief.

So that if the exemption was repealable it was repealed by said act of 1884, and also by sections 183 and 192 of the constitution of November 1, 1890, and if repealed by the

act of 1884 the provision in section 181 of the constitution of 1890, preserving *legal* exemptions, had no application to it, and we do not think that section 181 would even qualify or restrain the operation of sections 183 and 192 as to future taxes.

For further argument see brief of associate counsel on motion.

F. A. CRITZ,

R. C. BECKETT,

Of Counsel for Defendant in Error, Wirt Adams.

Supreme Court of the United States.

No. 80.—October Term, 1900.

The Yazoo and Mississippi Valley Railroad Company, et al., Plaintiffs in Error, *vs.* Wirt Adams. } In error to the Supreme Court of the State of Mississippi.

[January 7, 1901.]

This was an action begun in the Circuit Court of Hinds County, Mississippi, by Adams, as State revenue agent, suing for the use and benefit of certain cities and towns through which the defendant railway runs, to recover municipal taxes upon its property for the years 1893 to 1896, inclusive.

A demurrer to the declaration having been sustained upon the ground that the exemption claimed by defendant in its charter was perpetual and unconditional as to the municipal taxes, an appeal was taken to the Supreme Court which reversed the action of the Circuit Court, and remanded the case for a new trial. (75 Miss. 275.) An amended declaration having been filed claiming taxes from 1886 to 1897 inclusive, defendant interposed pleas (1) of the general issue; (2) that defendant was organized under an act of February 171, 883, containing the following provision in section 8: "That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State, necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi River, but not to extend beyond 25 years from the date of the approval of this act; and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by the treasurer of this State and paid into the State treasury, to be dealt with as the legislature may direct; *but said company shall be exempt from taxation by cities and towns;*" that the railroad was completed to the Mississippi River, October 25, 1892, by a consolidation with the Louisville, New Orleans and

Texas Railway Company, which had constructed and was then the owner of certain branches which reached the Mississippi River at several different points; (3) that after the company was organized, but before its line was finally located and constructed, the municipal authorities of the city of Jackson adopted an ordinance releasing the road from all city taxation for twenty years from date, provided it selected Jackson for its southeastern terminus, and provided further that the work on said road be commenced within one year and be completed within three years to Yazoo City; and that such ordinance was accepted and complied with by the defendant; (4) that, prior to the assessment of these taxes, defendant leased its road to the Illinois Central for a term of fifty years, which, until the bringing of this suit held and operated such road under such lease; that by its terms the Illinois Central agreed to pay and discharge all taxes assessed upon the defendant company; that under defendant's charter it was exempted from all municipal taxation; that the right of the legislature to make such exemption had been judicially recognized in the case of *Mississippi Mills* v. *Cook*, (56 Miss. 40,) and that such exemption entered into and constituted a part of the aforesaid lease, and of the charter contract between the defendant and the State; and that "the said exemption, by said charter conferred, has never been repealed by the legislature of said State," but that during the four years named the legislature refused to pass bills introduced to repeal such exemption.

A new trial resulted in a verdict for the plaintiff, which was affirmed by the Supreme Court. (76 Miss. 545.) Hence this writ of error.

Mr. Justice BROWN delivered the opinion of the Court.

Motion is made to dismiss for the want of a Federal question. The ground of the motion is that, while the second and fourth pleas set up the exemption contained in the charter from all municipal taxation, and the third pleads the exemption from city taxation by the ordinance of the mayor and aldermen of the city of Jackson, and inferentially, at least, that these constitute a contract under which the road was built, there is not only no averment that this contract had been impaired by subsequent legislation, but no discussion of the case in that aspect by the Supreme Court, which held that under a proper construction of the charter the railroad company is not entitled to an exemption from municipal taxation, because the road had never been completed to the Mississippi River. There was undoubtedly legislation both before and subsequent to the charter of this company, February 18, 1882, authorizing municipalities to impose taxes, but no allusion to them is made either in the pleadings, proofs or in the opinion of the Supreme Court.

The case then resolves itself into this: whether jurisdiction can be sustained when the only question involved is the construction of a charter or

contract, although it appear that there were statutes subsequent thereto which might have been, but were not, relied upon as raising a Federal question concerning the construction of the contract. There is no doubt of the general proposition that, where a contract is alleged to have been impaired by subsequent legislation, this court will put its own construction upon the contract, though it may differ from that of the Supreme Court of the State. The authorities upon this point are very numerous, but they all belong to a class of cases in which it was averred that, properly construed, the contract was impaired by subsequent legislation; but, if the sole question be whether the Supreme Court has properly interpreted the contract, and there be no question of subsequent legislative impairment, there is no Federal question to be answered. (*Lehigh Water Co.* v. *Easton*, 121 U. S. 388.)

To sustain our jurisdiction under the second clause of R. S. sec. 709, relied upon here, there must be drawn in question the validity of a State statute upon the ground of its being repugnant to the Constitution or laws of the United States; but of what State statute is the validity attacked in this case? None is pointed out in the record; none set up in the pleas; none mentioned in the opinion of the court. In fact, in the fourth plea it is expressly averred that "the exemption by said charter conferred has never been repealed by the legislature of the State;" and we are only asked to infer that certain statutes describing in detail methods of municipal taxation did in fact impair the obligation of the chartered contract. But are we bound to search the statutes of Mississippi to find one which can be construed as impairing the obligation of the charter? It is true that, in the first assignment of error in this court, it is averred that the Supreme Court of the State erred in rendering its judgment, whereby the tax provisions of the Annotated Code of 1892, providing for the office of revenue agent, and chapter 34 of the Laws of 1894, defining the powers of that office, "were given effect against the contract rights of the plaintiffs in error," contrary to the contract clause of the constitution; but no mention is made of this in the assignments of error filed in the Supreme Court of the State, which were of the most general description, and no allusion is made to the Code of 1892 or of the act of 1894 in the opinion of the court.

There is a laxity of pleading, in failing to set up the subsequent law impairing the obligation of the contract, which ought not to be encouraged. Granting that, as the case arose under the second clause of R. S. sec. 709, the invalidity of the statute need not be "specially set up and claimed," it must appear under the most liberal construction of that section that it was necessarily involved, and must indirectly, at least, have been passed upon in the opinion of the Supreme Court; but, for aught that appears, the very statutes under which this road was taxed were in existence before the road was chartered, although others, prescribing a different method of as-

sessing and collecting such taxes, may have been passed subsequent thereto This subsequent legislation, however, may have had, and apparently di have, nothing to do with the disposition of the case.

Three recent cases in this court are pertinent in this connection. I *Central Land Co.* v. *Laidley*, (159 U. S. 103,) an action of ejectmer was brought by Laidley against the land company in a court of We Virginia. The case turned upon the defectiveness of a wife's acknowledg ment to a deed of land. The Court of Appeals of Virginia, prior to th organization of the State of West Virginia, had in several cases held tha acknowledgments in this form were sufficient; but the Court of Appeal of West Virginia in this case held it to be insufficient, and the change the settled construction of the statute was charged as an impairment the contract. This court held that under the contract clause of the Co stitution, not only must the obligation of the contract be impaired, but must have been impaired by some act of the legislative power of th State and not by decisions of the judicial department only. "The appe late jurisdiction of this court," said Mr. Justice Gray, "upon writ of erro to a State court, on the ground that the obligation of a contract has bee impaired, can be invoked only when an act of the legislature alleged to b repugnant to the Constitution of the United States has been decided b the State court to be valid, and not when an act admitted to be valid ha been misconstrued by the court. The statute of West Virginia is admitte to have been valid, . . . and it necessarily follows that the questio submitted to and decided by the State court was one of construction onl and not of validity." It was said by Mr. Justice Miller in *Knox* v. *E change Bank*, (12 Wall. 379, 383): "We are not authorized by th judiciary act to review the judgments of the State courts because the judgments refuse to give effect to valid contracts, or because those judg ments, in their effect, impair the obligation of contracts. If we did, ever case decided in a State court could be brought here, where the party se ting up a contract alleged that the court had taken a different view of i obligation to that which he held."

So also in *Turner* v. *Wilkes County Commissioners*, (173 U. S. 461,) was said that "this being a writ of error to a State court, we cannot tak jurisdiction under the allegation that a contract has been impaired by decision of that court, when it appears that the State court has done noth ing more than construe its own constitution and statutes existing at th time when the bonds were issued, there being no subsequent legislatio touching the subject." In this case, too, the plaintiff in error sought take advantage of a change of judicial construction by the Supreme Cou of the State, which had held that the bonds were void, because the ac under which they were sued were not valid laws, not having been passe in the manner directed by the constitution.

The case of the *Yazoo Railroad Co.* v. *Thomas*, (132 U. S. 174,) is much relied upon by the plaintiff in error, and is claimed to be full authority for the maintainance of the writ in this case. This was a bill by the plaintiff in error in the case under consideration to enjoin a collection of taxes upon its property. "The illegality complained of was that the tax was in violation of the company's charter, by which it was insisted the property of the company incident to its railroad operations was exempted from taxation; and it was averred that the charter, as respects the exemption claimed, was a contract irrevocable, and protected by the contract clause of the Constitution of the United States; *that the unwarranted application of the general laws subsequently passed*, as well as the application of the general laws in force at the time, is equivalent to a direct repeal of the charter exemption; that it is an effectual abrogation of its privilege of exemption by means of authority exercised under the State." Not only does it appear from the opinion that the taxes in question were assessed under an act passed in 1888, subsequent to the charter, but on reference to the original bill, which we have consulted for that purpose, we find that this act of April 3, 1888, was specially set up and pleaded in the bill, and was charged to be a violation of the charter contract, which exempted the orator's road from taxation, and that such application of said act was the same as a repeal or revocation of the granted exemption, and therefore in violation of the Constitution of the United States forbidding such violation. In other words, the bill in that case not only pointed out the exemptions contained in the plaintiff's charter, but also set up the subsequent statute, which it was contended impaired the obligation of that contract. The bill thus contained the allegation which is wanting in this case, and put it in the power of this court to say whether the contract set up in the bill had been properly construed by the State court. This was also the case in *Water Power Co.* v. *Street Railway Co.*, (172 U. S. 475,) and *McCulloch* v. *Virginia*, (172 U. S. 102.)

If jurisdiction in this case be sustained, it results that whenever a State court gives a certain construction to a contract, it is our duty to search the subsequent statutes and to find out whether there be one which, under a different construction of the contract, may be held to impair it. We must decline the obligation. As was said by the Chief Justice in *Powell* v. *Brunswick County*, (150 U. S. 433, 440): "If it appear from the record by clear and necessary intendment that the Federal question must have been directly involved, so that the State court could not have given judgment without deciding it, that will be sufficient; but resort cannot be had to the expedient of importing into the record the legislation of the State as judicially known to its courts, and holding the validity of such legislation to have been drawn in question, and a decision necessarily rendered thereon

in arriving at conclusions upon the matters actually presented and considered." See also *Louisville & Nashville Railroad Co.* v. *Louisville*, (166 U. S. 709, 715.)

It is true that the Chief Justice of the Supreme Court certifies that upon the argument of this case the validity of legislation of the State of Mississippi subsequent to the statute of February 18, 1882, was drawn in question by the company upon the ground of its repugnancy to the Constitution of the United States; but we have repeatedly held that such certificate is insufficient to give us jurisdiction where it does not appear in the record, and that its office is to make more certain and specific what is too general and indefinite in the record. (*Lawler* v. *Walker*, 14 How. 149 *Gross* v. *United States Mortgage Co.*, 108 U. S. 477.) It is said in Lawler's case that "the statutes complained of in this case should have been stated. Without that the court cannot apply them to the subject matter of the litigation to determine whether or not they have violated the Constitution or laws of the United States." See also *Railroad Co.* v. *Rock*, (4 Wall. 177;) *Parmelee* v. *Lawrence*, (11 Wall. 36;) *Powell* v. *Brunswick County*, (150 U. S. 143,) and cases cited.

The writ of error is therefore *Dismissed.*

True copy.

Test:

Clerk Supreme Court, U. S.